THE SEAL OF CONFESSION

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A HISTORY OF THE SEAL OF CONFESSION

BY THE REV.
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AUTHOR'S PREFACE

This essay appeared in A. D. 1912 as the first historical treatise ever published on the seal of confession. True, Lenglet du Fresnoy 220 years ago wrote a treatise on the subject,[1] but the material it contains is exceedingly meagre and fragmentary. The development of the seal in the Middle Ages is passed over almost altogether.

In as much as the obligation of silence on the part of the confessor bears an intimate relation to the secret confession of sins, it was necessary first of all to investigate public confession and public penance as practiced in the early days of Christianity. The author has endeavored, in these difficult and much mooted questions, to assert no more than can be actually proved from the sources. For the rest, this treatise is predominantly historical. The civil law regarding the seal is treated in a special chapter. I have touched upon cases of real or alleged violation of the seal only in so far as the facts have been proved and are of historical importance.

This work was already in print when I learned of two new treatises on the subject of public pen-

[1] *Traité Historique et Dogmatique du Secret Inviolable de la Confession,* Paris-Lille, 1708.

ance and the seal. Since I could make use of these two books in the footnotes only, I may be permitted here to define briefly my attitude towards them. The first, *Buszstufen und Katechumenenklassen,* by E. Schwartz (Schriften der Wissenschaftlichen Gesellschaft in Strassburg, 7. Heft, 1911), treats chiefly of the penitential stages, and subjects especially the canonical letters of S. Basil to a thorough scrutiny (pp. 29–43). Schwartz admits that at a very early date in the history of the Church some of the faithful confessed their secret sins to the bishop and also in public (pp. 9, 11 f., 13); furthermore, that the acceptance of a public penance was not necessarily preceded by a public confession (p. 13). Schwartz also concedes that public penance for secret sins was canonically imposed beyond the fourth century (p. 58 f.). The other questions treated by this learned author hardly bear on our subject. What he says about the origin, the nature, and the obligation of confession in the early centuries, I must decline.

The second treatise is entitled, *Das Berufsgeheimniss und sein strafrechtlicher Schutz,* by Dr. Fritz Sauter (in Strafrechtliche Abhandlungen von Dr. v. Lilienthal, Heft 123, Breslau, 1910). The author touches on the seal of confession only in passing and, basing on the article "Beichtsiegel" by Wildt in Wetzer und Welte's Kirchenlexikon, Vol. II, 2nd ed., col. 249, maintains, that secrecy is not an official duty of the confessor, since it binds all who in any manner

come to know what has been confessed. I cannot agree with this view and refer to what I say in the course of this book.

This treatise was honored by the theological faculty of the University of Freiburg, Germany, with high praise; and the criticisms both at home and abroad were very favorable. Unfortunately during the Great War a translation into other languages was impossible. The present edition supplies the translation for English speaking countries. As fifteen years have passed since the first edition, I thought it proper to bring the book up to date. I have since its first appearance collected much new material and many new texts and added the regulations of the Code of Canon Law, so that this English edition presents an up to date revision of my original work.

Father Léon Honoré, S.J., has meanwhile published a book in French on the same subject.[2] This treatise, with unimportant exceptions, covers the same ground as the first edition of my book. Father Honoré, however, has neglected the manuscript sources altogether and touched only briefly upon the views of medieval theologians. His interpretation of their views is not always happy, (*e. g.,* when he ascribes to Hadrian VI views which he never taught, but, according to the scholastic method, merely cited as objections to be refuted). Several recent treatises

[2] *Le Secret de la Confession,* Bruges, 1924.

on the ancient penitential discipline by German authors have scarcely been noticed by Honoré, and the ordinances of the civil codes regarding the seal of confession have been entirely disregarded by him.

For these reasons I considered a new edition of my book opportune.

I am indebted for the preparation of this English edition of my work to the Rev. Father F. A. Marks, of Collinsville, Ill., and particularly to Dr. Arthur Preuss, of St. Louis, Mo., the well-known editor of the *Fortnightly Review,* of the Pohle-Preuss Dogmatic Series, the Koch-Preuss Handbook of Moral Theology, etc., and author of a number of learned works on Freemasonry and other subjects, who has had the kindness to revise the translation and attend to the technical details of publication. Both scholars have my most sincere thanks. May this work contribute towards eradicating many erroneous notions now so widely held on confession and kindred subjects.

BERTRAND KURTSCHEID, O. F. M.

Rome, April 15, 1927

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A HISTORY OF THE SEAL OF CONFESSION

INTRODUCTION

§ I. DEFINITION OF THE SEAL OF CONFESSION.—ITS RELATION TO THE SACRAMENT OF PENANCE

By the Seal of Confession we understand the obligation to keep secret whatever has been revealed in sacramental confession.[1] Since the Middle Ages we have for this obligation the technical term, "Seal of Confession" (*sigillum, signaculum confessionis*) [2], most probably taken from the figurative language of Holy Scripture in Dan. VIII, 26; Is. XXIX, 11; Apoc. XXII, 10; V, 1.[3]

[1] "*Sigillum confessionis nihil est aliud quam debitum confessionem celandi.*" S. Thomas, *Comment. in Sent.*, l. IV, d. 21, qu. 3, art. 4, sol. 3.

[2] As far as I know, the term *signaculum confessionis* was employed for the first time by Nicholas of Clairvaux, a pupil and contemporary of S. Bernard, *Sermo II de Beato Andrea* (Migne, *P.L.*, CXLIV, 833 C).

[3] Adrian Beier, *Tractatus de Sigillo Confessionis*, Jena, 1675, 1683 [2], cap. I, n. 1–10, treats at great length of the various meanings of *sigillum*.

The importance of the seal for the Sacrament of Penance follows from the nature of things. Without strict silence the administration of Penance would be impossible. On this conviction, alluded to by Pope Leo I,[4] and universally accentuated since the Middle Ages, is based the teaching of the theologians that the seal obligates in virtue of a divine law. This, however, does not preclude a certain process of development. Christ compared His Church to a mustard seed [5] gradually unfolding into the organism we now have before us. This simile may also be applied more or less to the various institutions of the Church, especially to one so closely interwoven with daily life as is the Sacrament of Penance.

According to Catholic teaching, Christ expressly conferred on his Church the power of forgiving sins.[6] This power was to be exercised in the form of a judicial sentence,[7] which naturally presupposes taking cognizance of the trespass and consequently, as a rule, confession. The development of details Christ left to His Church. She, therefore, has the right to fix the formalities and conditions for the

[4] *Epistola* 168 (an. 459); Ballerini, *Opp. Leonis M.*, I. (Venet., 1753); p. 1429.

[5] Mt. XIII, 31; cfr. L. Fonck, *The Parables of the Gospels,* p. 153, tr. by E. Leahy.

[6] Jn. XX, 23; *Conc. Trid.,* Sess. XIV, can. 3; cfr. Pohle-Preuss, *The Sacraments,* Vol. III, pp. 6 sqq.

[7] *Conc. Trident,* Sess. XIV, cap. 5 and 6; cfr. Pohle-Preuss, *The Sacraments,* Vol. III, pp. 64 sqq.

exercise of this power. This fact explains the various changes which Penance underwent in course of time. The Church simply accommodated herself to the times and to the views of the people without altering any essential part of the Sacrament.[8]

Christ gave no express command regarding the seal; at least none such has come down to us. Moreover, the seal necessarily presupposes a *secret* confession, which Christ has nowhere prescribed as the sole admissible form.

Nevertheless, there can be no doubt that the Divine Lawgiver intended both secret confession and the seal when He instituted Penance as a necessary means of pardoning sins.[9] The public confession of secret sins would have deterred men from confessing and receiving the Sacrament of Penance, and, it would have been a constant source of scandals, enmities, and similar drawbacks. If Penance really was to accomplish its purpose, this, generally speaking, was possible only by a secret accusation and strict silence on the part of the confessor. I say "generally speaking," because it is quite possible that during the early centuries, on account of the zeal and moral

[8] Cfr. I. Morinus, *Commentarius Historicus de Disciplina in Administratione Sacramenti Paenitentiae,* Lut. Paris., 1651, l. II, c. 3; A. Boudinhon, *Sur l'Histoire de la Pénitence à propos d'un Ouvrage Récent* (*Rev. d'Hist. et de Litt. Relig.,* II (1897) 316); P. Schmoll, *Die Busslehre der Frühscholastik* (München, 1909), 3 f.

[9] *Conc. Trident.,* Sess. XIV, cap. 2.

integrity of the early Christians,[10] less stress was laid upon keeping transgressions secret than upon making public reparation for them.

To determine the form of the seal in the early days of Christianity, it is necessary to examine two important questions: (1) Whether and to what extent secret sins were a matter of *public confession* during the early centuries; and (2) whether they were subject to *public penance.*[11]

§ 2. THE PUBLIC CONFESSION OF SECRET SINS DURING THE EARLY CENTURIES

From the biblical texts that treat of the confession of sins it cannot be demonstrated whether confession was public or private.[12] In the extra-biblical sources we meet for the first time with a confession

[10] Cfr. Harnack, *Das Wesen des Christentums* (Leipzig, 1901), 105; P. Batiffol, *Les Origines de la Pénitence* (*Études d'Histoire et de Théologie Positive,* I), Paris, 1907, 46.

[11] We shall treat both questions only in so far as it seems necessary for the later development of the Seal. An exhaustive treatise from every point of view is not intended and would lead too far astray.

[12] Acts XIX, 18: Πολλοί τε τῶν πεπιστευκότων ἤρχοντο ἐξομολογούμενοι καὶ ἀναγγέλλοντες τὰς πράξεις αὐτῶν.—1. Jn. I, 9: Ἐὰν ὁμολογῶμεν τὰς ἁμαρτίας ἡμῶν, πιστός ἐστι καὶ δίκαιος, ἵνα ἀῇ ἡμῖν τὰς ἁμαρτίας καὶ καθαρίσῃ ἡμᾶς ἀπὸ πάσης ἀδικίας. —Jas. V, 16: Ἐξομολογεῖσθε οὖν ἀλλήλοις τὰς ἁμαρτίας καὶ εὔχεσθε ὑπὲρ ἀλλήλων ὅπως ἰαθῆτε.—Cfr. F. Probst, *Sakramente und Sakramentalien in den ersten christl. Jahrh.* (Tübingen,

of sins in the *Didache.*[13] This document mentions a public confession of sins which took place at divine service;[14] however, it is doubtful whether this was a general ritualistic ceremony or a special and sacramental confession.

Confession of sins is also mentioned in the Epistle of Barnabas,[15] though nothing is said there as to

1872), p. 274; Gartmeier, *Die Beichtflicht* (Regensburg, 1905), pp. 25 ff.; E. Mangenot, *"Confession dans la Bible"* in the *Diction. de Théol. cath.* III, 833–838.

[13] Between A. D. 80 and 100. Cfr. Funk, *Kirchengeschichtliche Abhandlungen und Untersuchungen,* Vol. I, pp. 108–144, Paderborn, 1897; IDEM, *Patres Apostolici,* Vol. I, Proleg. XIII, Tübingen, 1901: O. Bardenhewer, *Gesch. d. altkirchl. Literatur,* Vol. I, p. 76.

[14] Cap. IV, 14: ἐν ἐκκλησίᾳ ἐξομολογήσῃ τὰ παραπτώματά σου καὶ οὐ προσελεύσῃ ἐπὶ προσευχήν σου ἐν συνειδήσει πονηρᾷ. Funk. *Patres Apost.,* I, 14.—Cap. XIV, 1: κατὰ κυριακὴν δὲ Κυρίου συναχθέντες κλάσατε ἄρτον καὶ εὐχαριστήσατε, προεξομολογησάμενοι τὰ παραπτώματα ὑμῶν. Funk, *l. c.,* I, 32.—Cfr. Gartmeier, *Beichtpflicht,* 72 ff.; F. X. Mayer, *Die Beichte als Bekenntnis der einzelnen Sünden, eine Untersuchung der wichtigsten Dokumente aus dem ersten und zweiten Jahrhundert* (Dillinger Programm, 1908), 4 ff.; Vacandard, *Les Origines de la Confession Sacramentelle* (*Études de Critique et d'Histoire Religieuse,* II[e] Série, Paris, 1910), 56; Fr. Weiss, *"Das Sündenbekenntnis in der Didache"* (*Theol. Quartalschrift,* XCVII [Tübingen, 1915] pp. 113–119); J. V. Bainvel in his article *"Note sur la Confession Sacramentelle dans les Premiers Siècles"* in *Recherches de Science Religieuse,* XI (1920), 216 says that this was a sacramental, public confession, not merely a general accusation of sins.

[15] Written during the reign of Nerva, 96–98, at least not much later. Cfr. Funk, *Abhandlungen,* II (1899), 77–108;

how and to whom confession was to be made.[16]

About the close of the first century Clement of Rome [17] admonishes the Corinthians: "Submit yourselves to your priests, and be reproved unto repentance, bending the knee of your heart." [18] Still more plainly he writes: "Let us, therefore, pray that for our transgressions, and for what we have done through any attacks of the adversary, forgiveness may be granted to us . . . for it is better for man to confess his transgressions than to harden his heart." [19] From these passages it is not clear whether Clement intended to exhort the rebellious Corinthians to be obedient to their ecclesiastical superiors and do penance before God, or to confess their sins to the priests. At any rate, these texts furnish no evidence in favor of public confession. The same must be said of the second Letter of Clement, which,

Patres Apost., I, Proleg., XXV; O. Bardenhewer, *Altkirchl. Lit.*, I, 86 ff.

[16] XIX 12: *ἐξομολογήσῃ ἐπὶ ἁμαρτίαις σου. Οὐ προσήξεις ἐπὶ προσευχὴν ἐν συνειδήσει συνειδήσει πονηρᾷ.* Funk, *Patres Apost.*, I, 94. Cfr. Probst, *Sakramente*, 274 ff.; Gartmeier, *op. cit.*, 74; Mayer, *op. cit.*, 7.

[17] Cfr. Funk, *Patr. Apost.*, I, Proleg. XXVI sq.

[18] LVII 1: *ὑποτάγητε τοῖς πρεσβυτέροις καὶ παιδεύθητε εἰς μετάνοιαν, κάμψαντες τὰ γόνατα τῆς καρδίας ὑμῶν.* Funk, *op. cit.*, I, 172.

[19] LI, 1 & 3: *Ὅσα οὖν παρεπέσαμεν καὶ ἐποιήσαμεν διά τινος τῶν τοῦ ἀντικειμένου, ἀξιώσωμεν ἀεθῆναι ἡμῖν . . . καλὸν γὰρ ἀνθρώπῳ ἐξομολογεῖσθαι περὶ τῶν παρατωμάτων ἢ σκληρῦναι τὴν καρδίαν.* Funk, *l. c.*, I, 164; Mayer, *l. c.*, 8 sqq.

though spurious, belongs to the middle of the second century.[20] "Whilst we are in this world," we read there, "let us repent with all our heart of the wicked deeds we have done in the flesh, that we may be saved by the Lord, while we have yet time for repentance. For after we have departed this world, we can no longer make confession, or repent any more in that place." [21]

Equally indefinite is the *Shepherd of Hermas,*[22] a document of great importance for the penitential practice of the second century. "God and our Lord," says the Angel of Repentance, "will not remember our offences, but is easily appeased by those who confess their sins." [23] Neither the manner of confession nor the person to whom it was to be made, is indicated.

St. Irenaeus (+ about 200) [24] is said to be one of the oldest witnesses for the obligatory public confession of secret sins. As we shall have to deal with the text of this great Father of the Church more in detail in the next section, a few remarks will suffice

[20] Cfr. Funk, *Kirchengeschichtl. Abhandlungen,* III (1907), 261–275; *Patres Apost.,* Proleg. L.

[21] Cap. VIII, 2 & 3. Cfr. Funk, *Patres Apost.,* I, 192 sq. Mayer, *op. cit.,* 10; Watkins, *A History of Penance,* I (London 1920), p. 74.

[22] Cfr. Funk, *Patres Apost.,* I, Proleg. CXXII sq.

[23] *Simil.* IX, 23, 4 . . . ὁ θεὸς καὶ ὁ κύριος . . . οὐ μνησικακεῖ τοῖς ἐξομολογουμένοις ἁμαρτίας αὐτῶν. Funk, *l. c.,* I, 618. Cfr. Mayer, *op. cit.,* 15.

[24] Cfr. Bardenhewer, *Altkirchl. Lit.,* I, 496.

here. Irenaeus tells us that some women who had fallen into heresy, upon their return to the Church among other things also confessed secret [25] violations of chastity. A public penance was imposed on them, to which some refused to submit. As a consequence the recusants were not readmitted to the Church. Irenaeus describes the public penance of these women by saying: *αἱ μὲν καὶ εἰς φανερὸν ἐξομολογοῦνται.* This phrase is understood by some [26] in the sense of a public confession. However it may also signify a public penance,[27] and this meaning seems to be indicated by the present tense "*ἐξομολογοῦνται,*" whilst for the first confession of the women the expression "*ἐξομολογήσαντο*" is used. *At any rate, the text offers no sure evidence that the public confession of secret sins was deemed necessary at that time.*

Further evidence of a public confession of sins is met with in the Eastern Church, in the works of

[25] Thus Probst, *loc. cit.*, 283; Gartmeier, *l. c.*, 81; cfr. Schanz, *Die Lehre von den heiligen Sakramenten der kath. Kirche* (Freiburg, 1893), 565; Mayer, *l. c.*, 33.

[26] Schanz, *l. c.;* Probst, *l. c.;* Mayer, *l. c.;* Funk (Kraus, *Realenzykl.*, I, 181); Vacandard, in Vacant-Mangenot's *Diction. de Théol. Cath.*, III (1908), 858.

[27] Cfr. Bickell, *Zur Geschichte der Beichte im Orient während der ersten vier Jahrhunderte* (*Zeitschr. f. kath. Theol.*, Innsbruck, 1877, 421 ff.); Rauschen, *Eucharistie und Bussakrament während der ersten sechs Jahrhunderte*, p. 185; Tixeront, *La Confession est-elle une Institution du Moyen-âge* (*L'Université*, LXXII [Lyon, 1913] 117); Watkins, I, 102.

Origen (+ about 251).[28] At first glance it would seem that Origen demands a public confession for all sins when he writes: "At any rate, all we do must be spoken and made manifest. Whatever we commit in secret, either in words or in thoughts, must all be made public, must all be brought to light. It will be brought to light by him who is both accuser and tempter. For he now incites us to sin and accuses us after we have sinned. If, then, we anticipate him in this life and become our own accusers, we shall escape the malice of the devil, our enemy and accuser."[29] However, Origen merely wishes to emphasize that the devil will manifest our secret sins at the last judgment unless we anticipate him by penance and self-accusation in this life. He by no means intended to impose public confession of all

[28] In regard to the date of Origen's death, cfr. Preuschen, *Zur Lebensgeschichte des Origenes* (*Theol. Studien und Kritiken,* Gotha, 1905, 359 sqq.).

[29] *Hom. in Lev.,* 3, n. 4: *"Est aliquod in hoc mirabile secretum, quod iubet pronuntiare peccatum. Etenim omni genere pronuntianda sunt et in publicum proferenda cuncta quae gerimus. Si quid in occulto gerimus, si quid in sermone solo vel etiam intra cogitationum secreta commisimus, cuncta necesse est publicari, cuncta proferri: proferri autem ab illo qui et accusator peccati est et incentor. Ipse enim nunc nos ut peccemus instigat, ipse etiam cum peccaverimus accusat. Si ergo in vita praeveniamus eum, et ipse etiam cum peccaverimus accusat. Si ergo in vita praeveniamus eum, et ipsi nostri accusatores simus, nequitiam diaboli inimici nostri et accusatoris effugimus."* (Migne, *P.G.,* XII, 429 A.)

secret sins as a duty. He himself admits, when praising the prophets for their frank avowal of their sins: "I would not dare to confess my sins before the few here present, because my hearers would condemn me." [30] True, Origen in another place speaks of public confession, but intimates that there was question of a voluntary confession.[31]

For certain kinds of sin, however, Origen seems to require public confession. "Behold," he writes, "what Sacred Scripture teaches us, that we must not conceal our sins in our heart." The sins concealed in the heart are like undigested food, which causes distress, until it is ejected from the stomach. But if a man accuses himself and confesses his sins, he ejects them as it were, and removes the cause of his distress. "Take care, therefore," he continues,

[30] *Hom. in Ierem.*, 19, n. 8: Εἶτα κατανόησον, ὡς εἰσιν οἱ προφῆται εὐγνώμονες ἄνθρωποι, καὶ οὐκ ἀποκρυπτόμενοι τὰ ἴδια ἁμαρτήματα ὡς ἡμεῖς, καὶ λέγοντες οὐκ ἐπὶ τῶν τότε μόνον, ἀλλ' ἐπὶ πασῶν τῶν γενεῶν εἰ ἡμαρτήκασι. Κἀγὼ μὲν ὀκνῶ ἐξομολογήσασθαι τὰ ἁμαρτήματά μου ἐπὶ τῶν ὀλίγων ἐνταῦθα, ἐπεὶ μέλλουσί μου καταγινώσκειν οἱ ἀκούοντες. (Migne, *P.G.*, XIII, 517 C D). Note, however, that Rufinus admits that he translated Origen's homilies on Leviticus rather freely. (Cfr. Migne, *P.G.*, XIV, 1293 sqq.)

[31] *Hom. in Ps.*, 37, 2, n. 1: *"Intellige mihi fidelem hominem, sed tamen infirmum, qui etiam vinci ab aliquo peccato potuit et propter hoc mugientem pro delictis suis et omni modo curam vulneris sui sanitatemque requirentem licet praeventus sit et lapsus. . . . Si ergo sit aliquis ita fidelis, ut, si quid conscius sibi sit, procedat in medium et ipse sui accusator exsistat."* (Migne, *P.G.*, XII, 1381 A B). Cfr. Probst, *op. cit.*, 288.

"to whom you confess your sins. First prove the physician to whom you intend to explain your disease, whether he knows how to be sick with the infirm and to weep with the sorrowing, whether he has mastered the art of compassion and sympathy. When you have found him to be an experienced and sympathizing physician, do what he orders and follow his advice. If he judges and foresees that your disease is of a nature *that it must be brought before the assembly of the faithful to be cured,* whereby they may be edified and you may be easily healed, know that this must be done only after mature deliberation and upon the advice of the physician." [32] That Origen in the quoted text has *secret* sins in mind, follows from the entire comparison. No one

[32] *Hom. in Ps.,* II, 37, n. 6: *"Vide ergo, quid edocet nos Scriptura divina, quia oportet peccatum non celare intrinsecus. Fortassis enim sicut ii qui habent intus inclusam escam indigestam, aut humoris vel phlegmatis stomacho graviter et moleste immanentis abundantiam si vomuerint relevantur, ita etiam hi, qui peccaverunt, si quidem occultant et retinent intra se peccatum, intrinsecus urgentur et propemodum suffocantur a phlegmate vel humore peccati. Si autem ipse sui accusator fiat, dum accusat semetipsum et confitetur, simul evomit et delictum atque omnem morbi digerit causam. Tantummodo circumspice diligentius, cui debeas confiteri peccatum tuum. Proba prius medicum cui debeas causam languoris exponere, qui sciat infirmari cum infirmante, flere cum flente, qui condolendi et compatiendi noverit diciplinam, ut ita demum, si quid ille dixerit, qui se prius et eruditum medicum ostenderit et misericordem, si quid consilii dederit, facias et sequaris, si intellexerit et praeviderit talem esse languorem tuum, qui in conventu*

will say of public faults that they are concealed in the heart; nor is so much prudence and deliberation needed for a confession of faults already known to the assembly.[33] Origen first of all demands a *private* confession to an experienced and sympathetic spiritual physician, as a means of removing the internal infection. The penitent should follow the directions of his physician in case the latter, after prudent and due deliberation, should judge it necessary that a public atonement be made before the assembly. In what does this public atonement consist according to Origen? Does it consist solely in public *penance,* as Batiffol[34] supposes, or also in public *confession?* The Latin text (*"in conventu totius ecclesiae exponi debeat et curari*) evidently comprises both momenta. The word *"exponere,"* which occurs a few sentences farther up, signifies an express confession of sins.[35] Others admit this interpretation,

totius ecclesiae exponi debeat et curari, ex quo fortassis et ceteri aedificari potuerunt et tu ipse facile sanari, multa hoc deliberatione et satis perito medici consilio procurandum est." (Migne, *P. G.,* XII, 1386 A B.)

[33] Cfr. Probst, *l. c.,* 287 f.; Bickell, *Zeitschrift f. kath. Theol.,* I (1877), 425 f.; Vacandard, *Études de Critique* (1910), 80.

[34] *Études d'Histoire et de Théol. Positive*[5] (1907), 348[2]; Watkins, I, 137.

[35] *"Proba prius medicum, cui debeas causam languoris exponere";* cfr. E. Vancard, *La Pénitence Publique dans l'Eglise Primitive*[7] (Paris 1908) 39. However, Tixeront in his article: *"Comment se confessaient les Chrétiens des Premiers Siècles?"* (in *L'Université Cath.,* LXXII [1913] 233 sqq.) is of a dif-

but assert that Origen requires confession before the assembly for public transgressions only,[36] because otherwise confession would not serve to edify the faithful, but rather scandalize them. However, Origen does not set up the edification of the faithful as the only or as the decisive point of public confession, but merely says: Perhaps the others will be edified by it. This effect might be achieved also by a confession of secret sins.

Greater weight must be attached to prudent advice and mature consideration on the part of the spiritual physician, on which the public confession is made to depend. The wording of the text here seems to point to a voluntary confession.[37] However, in our opinion the passage has a different sense, namely, that the physician of the soul should not demand a public confession without sufficient reason nor indiscriminately for all transgressions. But when the confessor judges such a proceeding necessary, the penitent must comply with his directions. The penitent cannot, of course, be compelled to do so, since

ferent opinion. He interprets the words in our text as meaning merely a public *penance,* or at most a confession which was considered part of the penance, not a sacramental confession. Cfr. Jos. Hörmann, *Untersuchungen zur griechischen Laienbeichte,* Donauwörth, 1913, p. 110.

[36] Probst, *loc. cit.,* 288.

[37] Thus Blötzer, *Die geheime Sünde in der altchristl. Bussdisciplin* in *Zeitschrift für kath. Theol.* (1887), 628; Rauschen, *Euch. u. Busszssakr.,*[2] 164. Similarly A. d'Alès, *L'Édit de Calliste*[2] (Paris, 1914), 448.

there are no witnesses to the accusation.[38] In this sense Origen speaks only of an advice, as does St. Augustine two centuries later, when he merely recommends public penance in case of secret murder, although it was of strict obligation.[39] This view is confirmed by another passage from Origen's writings. When expounding the Scripture text, "the leper shall have his clothes torn and his head bare" (Lev. XIII, 45), he writes: "The sinner, too, shall not cover the ugliness of his transgressions, so that he may not be a whitened sepulchre, which outwardly appears beautiful to men, but inwardly is full of dead men's bones and every uncleanness." He then continues: "The divine law demands that the sinner cover not his head, namely, in case of sins of the head, *i. e.*, against faith, they should not be concealed, but made public to all, so that he [the sinner] may be amended by the intervention and correction

[38] Cfr. Can. 5, *Concil. Carthag. VI* (419); *Constit. Apost.*, II, 21, ed. Funk; *Didasc. et Constit. Apost.* (Paderb., 1905), 77.

[39] *Sermo* 82, c. 8, n. 11 (Migne, *P.L.*, XXXVIII, 511). Cfr. Holl, *Enthusiasmus und Bussgewalt beim griech. Mönchtum* (Leipzig, 1898), 236, 250; B. Poschmann, *Die Sündenvergebung bei Origenes, Ein Beitrag zur altchristlichen Busslehre* (Braunsberg, 1912) p. 47 f.; Idem, *Hat Augustin die Privatbusse eingeführt?* (Braunsberg, 1920) p. 10; R. Paste in his article: *Il Sacramento della Penitenza* (in *Scuola Cattolica*, LI, 1923) 227, thinks a distinction must be made between *custom* and *duty;* but this is of no importance here.

of all present and thus merit forgiveness." [40] Origen here evidently has in mind those sins which in the early centuries were called *"crimina capitalia," viz.:* apostasy, adultery, and murder, the same that Tertullian designated as sins against God and His temple.[41] Since the capital sins comprised these sins in their various grades and subdivisions,[42] which were not at all liable to public penance, Origen was right in counselling the spiritual physician to use prudence and careful deliberation.

The other sources which deal with the penitential discipline of the Eastern Church, throw no light on public confession of secret sins. The Syrian Bishop Aphraates (about 337) admonishes confessors not to expose those who reveal their sins to them.[43] St.

[40] *Hom. in Lev.,* 8, n. 10: *"Vult ergo lex divina peccatorem non solum vestimenta non assuere, sed et caput non contegere, ut, si quod est capitis delictum, i. e., si in Deum aliquid commissum est, si in fide peccatum est, nec haec quidem habeantur obtecta, sed omnibus publicentur, ut interventu et correptione omnium emendetur et veniam mereatur."* (Migne, *P.G.,* XII, 502 A B). Cfr. Probst, *op. cit.,* 288; Schanz, *op. cit.,* 569. Stufter, *Öffentliche und geheime Busse bei Origenes,* in the *Zeitschr, für kath. Theol.,* XXXVII (1913) 200, is of the opinion that the text refers to a previous denunciation.

[41] *De Pudicitia,* cap. 21, ed. Preuschen; Tert., *De Paenit.; De Pudicitia.*

[42] Cfr. *infra,* note 92.

[43] *Demonstratio VII de Paenitentibus,* n. 4: *"Quicumque vobis [sc. medicis] suum vulnus detexerit, ei remedium imponite paenitentiae; eum autem qui infirmitatem suam manifestare erubuerit, ne hanc a vobis abscondat adhortamini;*

John Chrysostom in several passages speaks against a public confession of sins.[44] The church-historian Sozomen, however, seems to allude to the practice of public confession in the early days of the Church. He connects the institution of the penitential priest with public confession when he writes: Because the bishops believed it to be an insupportable burden to confess one's sins before all the people assembled in church, as in a theater, they entrusted the matter to a prudent and discreet priest.[45] However, since opinions differ widely regarding the time when the penitential priest was first introduced,[46] nothing definite can be gathered from Sozomen as to the duration of the practice of public confession.

In the Western Church Tertullian at the beginning of the third century gives a graphic description of the public penitential discipline.[47] According to him,

cumque ipsam vobis revelaverit, nolite eam publicare." (Ed. Graffin, *Patrologia Syriaca,* I (Paris, 1894), 318 sq.

[44] Cfr. especially *Contio IV in Lazarum,* n. 4 (Migne, *P.G.,* XLVIII, 1012); Schanz, *Sakramentenlehre,* 570; Galtier, "*Jean Chrysostome et la Confession*" (*Recherches de Science Relig.,* I [1911] 209–240; 313–350); Watkins, I, 332 sqq.

[45] *Historia Eccles.,* VII, 16. See the text *infra* p. 43, n. 3. Watkins (I, 354) says that Sozomen borrowed this expression from St. Chrysostom and that it does not necessarily presuppose a public confession of sins during the first centuries.

[46] Cfr. Rauschen, *Eucharistie und Bussakrament*[2], 193; Vacandard, *Les Origines des Prêtres Pénitenciers* (*Revue du Clergé Franç.,* 1905), 361–386; Batiffol, *Études*[5] (1907), 343–350.

[47] Cfr. Preuschen, *Tertullians Schriften De Paenitentia et*

penance consists not merely in an interior disposition, but must manifest itself by external acts, which are commonly called *exomologesis*. The first of these acts is that the sinner confesses his transgressions to the Lord; then he casts himself on his knees before the assembly, before the priests and the beloved of God, humbly asks for their prayers, fasts, weeps and addresses supplications to God by day and by night.[48] That formal confession was made before the assembly, cannot, however, be demonstrated from Tertullian. True, the words *"exomologesis est,*

De Pudicitia mit Rücksicht auf die Bussdisziplin, Giessen, 1890; Esser, *Die Buszschriften Tertullians de Paenitent. und de Pudicitia und das Indulgenzedikt des Paptes Kallistus,* Bonn, 1895; K. Adam, *Die Chronologie der noch vorhandenen Schriften Tertullians,* in the *Katholik,* LXXXVIII (1908), 348.

[48] *De Paenit.,* c. 9: *"Huius igitur paenitentiae secundae et unius, quanto in arto negotium est, tanto operosior probatio, ut non sola conscientia praeferatur, sed aliquo etiam actu administretur. Is actus, qui magis Graeco vocabulo exprimitur et frequentatur,* ἐξομολόγησις *est, qua delictum Domino nostrum confitemur, non quidem ut ignaro, sed quatenus satisfactio confessione disponitur, confessione paenitentia nascitur, paenitentia Deus mitigatur. Itaque exomologesis prosternendi et humilificandi hominis disciplina est, conversationem iniungens misericordiae illicem. De ipso quoque habitu atque victu mandat sacco et cineri incubare, corpus sordibus obscurare, animum maeroribus deicere, . . . ingemiscere, lacrimari et mugire dies noctesque ad dominum Deum suum, presbyteris advolvi, et caris Dei adgeniculari, omnibus fratribus legationes deprecationis suae iniungere."* (Preuschen, *Tertullian de Paenit. und de Pudicitia,* Freiburg, 1891 (Krügers Quellenschr., I, 2), 14 f.

qua delictum Domino nostrum confitemur," express an external manifestation of sins as distinguished from a mere internal sentiment; but it is not at all certain whether this confession was made before the bishop alone, or before the presbytery, or before the entire assembly of the faithful. This much may be stated as certain, however, that the public penance, as described by Tertullian, and which was required also for secret grievous sins (as we shall demonstrate later), involved an actual confession of sins.[49] In this sense at least he was justified in calling public penance a "self-exposure";[50] in this sense also may be explained his words: "The exomologesis is a supplication for pardon, because he who asks for pardon confesses his transgressions."[51]

After Tertullian, St. Cyprian, in his booklet *"De Lapsis,"*[52] offers us classical passages in favor of

[49] Battiffol, *Études,* I[5] (1907), 211; Vacandard, *Études de Critique* (Paris, 1910), 88, 90 sq.; O'Donnell, *The Seal of Confession* (*Irish Theol. Quart.,* 1910), 45; Rauschen, *l. c.,* 181; K. Adam, *Die geheime Kirchenbusse nach dem hl. Augustin* (Kempten, 1921) 25; Watkins I, 116.

[50] *De Paenit.,* c. 10: *"Plerosque tamen hoc opus ut publicationem sui aut suffugere aut de die in diem differre praesumo."* (Preuschen, *l. c.,* 15).

[51] *De Oratione,* n. 7: *"Exomologesis est petitio veniae, quia qui petit veniam, delictum confitetur."* Ed. Wissowa (*Corp. Script. Eccl. Lat.,* XX, 185).

[52] Cfr. Goetz, *Die Busslehre Cyprians,* Königsberg, 1895; K. Müller, *Die Bussinstitution in Karthago unter Cyprian* (*Zeitschr. f. Kirchengesch.,* XVI [1895], 26 ff.).

the public penitential discipline. In stirring words he admonishes the fallen to submit to public penance for their sins. St. Cyprian does not expressly mention confession in the presence of the assembly,[53] but he frequently exhorts his hearers to confess their sins *"apud sacerdotes Dei."*

Bishop Pacian of Barcelona (about 390) describes the penitential discipline in vogue in the Spanish Church. In his *Paraenesis ad Paenitentiam* he evidently made use of Tertullian's writings on penance,[54] hence the description which he gives of public penance coincides essentially with that of Tertullian. In the eighth chapter he takes to task those who conceal their sins out of shame. He implores them by the all-knowing God to desist from this practice and to take an example from the sick, who do not hesitate to expose the private parts of their body to the physician in order to be cured.[55] According to this, Pacian apparently requires only a confession to the bishop or to the presbytery. The same he does in the following chapter, where he treats of the pen-

[53] Cfr. *De Lapsis,* c. 27, 28, 29; Hartel, *Corp. Script. Eccl. Lat.,* III (1868), 256 sq.; Vacandard, *Études,* 91. A different opinion is held by P. A. Kirsch, *Zur Geschichte der kath. Beichte* (Würzburg, 1902), 51 ff.

[54] Cfr. Grube, *Studien zu Pacian von Barcelona,* München, 1901; Peyrot, *Paciani Barcelonensis Episcopi Opuscula,* Zwolle, 1896. Pacian not only borrowed ideas, but frequently lifted entire sentences bodily from Tertullian, as Peyrot proves in many places.

[55] *Paraenesis,* c. 9; ed. Peyrot, 115 sq.

ance imposed. There are some, he says, who indeed confess their sins properly, but refuse to accept the penance imposed. These are like the sick who show their wounds and sores to the physician, but spurn the prescribed remedies.[56] Only in one passage Pacian seems to hint at a public confession of sins, namely, where he writes: *"Qui fratribus peccata sua non tacet, ecclesiae, lacrimis adiutus Christi, precibus absolvitur."* [57] However, these words may be understood of public penance and of the confession of sins necessarily implied by it.

About the same time as St. Pacian (384) St. Ambrose wrote his two books on Penance, in which he shows, especially against the Novatians, that we may obtain pardon of all our sins from God and His Church. In one place St. Ambrose seems to require public confession, at least for more grievous offences, *i. e.,* the capital sins. "It is, therefore," he writes, "most evidently commanded by the word of God that the grace of the heavenly sacrament shall be again imparted to the greatest sinners if they do penance from the bottom of their heart and make *an open confession* of their sins." [58] In another passage, when comparing penance to the raising of Lazarus,

[56] *Paraen.,* c. 8; ed. Peyrot, 115.

[57] *Paraen.,* c. 8; Peyrot, 115.

[58] *De Paenitentia,* l. II, c. 3, n. 19: *"Ergo evidentissima Domini praedicatione mandatum est etiam gravissimi criminis*

St. Ambrose alludes to a double confession: a secret one made before accepting the penance, and a public one made before the reconciliation takes place.[59] However, no definite opinion can be formed, because other texts seem rather to favor secret confession.[60]

St. Augustine does not mention public confession, from which fact we conclude that since the close of the fourth century secret confession of secret transgressions was deemed sufficient.[61]

Now arises the question: to whom was the confession which preceded the acceptance of public penance to be made? The learned Morinus, in his extensive historical commentary on the Sacrament of Penance, adheres to the opinion that the capital sins, even when secret, in so far as they were subject to public penance, had to be confessed before the assembled ecclesiastical court, the presbytery. He holds there was no distinction in those days between the *forum internum* for secret sins and the *forum externum* for public sins, but in both cases the same court,

reis, si ex toto corde et manifesta confessione peccati paenitentiam gerant, sacramenti caelestis refundendam gratiam." (Migne, *P.L.*, XVI, 501).

[59] *De Paenit.*, l. II, c. 7 (*ib.*, 510 sq.).

[60] Cfr. *De Paenitentia*, l. II, c. 10: "*An . . . pudeat te Deo supplicare, quem non lates, cum te non pudeat peccata tua homini quem lateas confiteri.*" (Migne, *l. c.*, 518). Cfr. Paulinus, *Vita S. Ambrosii*, c. 39 (Migne, XIV, 40).

[61] Cfr. P. A. Kirsch, *Zur Geschichte der kath. Beichte*, 72.

i. e., the presbytery under the presidency of the bishop, was competent.[62]

The existence of such a court is alluded to in the writings of St. Ignatius of Antioch;[63] and is described in detail in the Syrian *Didascalia* [64] and in the Apostolic Constitutions.[65] Nevertheless, no certain evidence for an obligatory confession of secret sins before the presbytery can be adduced from these sources, on which Morinus relies.[66] On the contrary, the bishop is admonished to act according to the teaching of Christ whenever anyone is accused of a transgression before him. "Call the accused into your presence," we read, "when no one else is present, and conjure him to do penance. If he remains

[62] Morinus, *Commentarius de Disciplina in Administratione Sacramenti Paenitentiae* (Paris, 1651), l. II, c. 10.

[63] *Epist. ad Philad.*, c. VIII, 1: πᾶσιν οὖν μετανοοῦσιν ἀφίει ὁ Κύριος, ἐὰν μετανοήσωσιν εἰς ἑνότητα θεοῦ καὶ συνέδριον τοῦ ἐπισκόπου. Funk, *Patres Apost.*, I (1901), 270. However, Funk (*l. c.*, note), and Mayer (*Die Beichte*, p. 14) interpret the expression "συνέδριον" in the wider sense of "communion," "harmony."

[64] The origin of this document dates back to the second half of the third century. Cfr. Funk, *Didascalia et Constitutiones Apostolorum* (Paderborn, 1905), Prolegom. v; Achelis and Flemming, *Die syrische Didaskalia übersetzt* (Leipsic, 1904, 666 ff.)

[65] The Apostolic Constitutions, which in their first six books are an amplification of the *Didascalia*, belong to the beginning of the fifth century (400). Cfr. Funk, *l. c.*, Proleg. xix; Idem, *Abhandlungen*, II (1899), 359–372.

[66] Cfr. Funk, *Didascalia et Const. Apost.*, 60 sqq., 142 sqq.

stubborn, call in two or three witnesses and point out to him the magnitude of his guilt. . . . If in the presence of the witnesses the sinner is induced to repent, it will be good for him; but if he remains obstinate, tell it to the Church." [67] This passage suggests the inference that, at least in the churches in which the Apostolic Constitutions were in force, a confession of secret sins before the presbytery was not required.

For the Western Church Tertullian is cited as saying that the public sinners cast themselves at the feet of the priests (*"presbyteris advolvi"*).[68] However, this general expression does not justify us in inferring, as Morinus does, that a confession was made before the presbytery.[69] It is true Tertullian in his Apology expressly mentions the ecclesiastical court that decided those cases which were punished by excommunication.[70] However, there is a difference between excommunication and public penance. The former was imposed only in cases of public and very grievous offences.[71] It may be assumed that the

[67] *Const. Apost.*, l. II, c. 37 (Funk, 125).

[68] *De Paenit.*, c. 9. (Preuschen, *l. c.*, 14).

[69] *Commentarius*, l. II, c. 11.

[70] *"Nam et iudicatur magno cum pondere, ut apud certoes de Dei conspectu summumque futuri iudicii praeiudicium est, si quis ita deliquerit, ut a communicatione orationis et conventus et omnis sancti commercii relegetur. Praesident probati quique seniores, honorem istum non pretio sed testimonio adepti."* (Ed. Oehler, I; Lipsiae, 1853, 254.)

[71] *Origines, Comment. in Matth.*, c. 89: *"Propter hoc enim*

entire presbytery co-operated in such an important matter. The public penance, however, could be imposed by the bishop also in cases of secret transgressions which were confessed to him; only he could not compel the penitent to perform a penance or excommunicate him as long as the transgression had not been proved.[72]

St. Cyprian, writing a few years later, did not wish to decide the case of those who had denied the faith in the persecution of Decius, but referred the matter to the clergy and the laity for examination.[73] However, there is question here of a public denial of the faith, and though St. Cyprian says that those who had denied the faith only in thought or by an internal act of the will, not by an external act, confessed their transgression *"apud sacerdotes Dei,"* [74] it nevertheless remains doubtful whether by this expression is meant the bishop alone, to whom Cyprian invariably applies the term *"sacerdos,"* [75] or the entire presbytery.

et in ecclesiis consuetudo tenuit, ut, qui manifesti sunt in magnis delictis, eiiciantur ab oratione communi." (Migne, *P.G.*, X, 120). Cfr. Hinschius, *System des kath. Kirchenrechtes,* IV (Berlin, 1889), 693 [4].

[72] Cfr. p. 46, n. 10 *infra.*

[73] *Epist.,* 19: *"Convenit ut praepositi cum clero convenientes praesente etiam adstantium plebe, quibus et ipsis pro fide et timore suo honor habendus est, disponere omnia consilii communis religione possimus."* (Hartel, III, 526.)

[74] *De Lapsis,* cap. 28 (Hartel, *loc. cit.,* 257).

[75] Cfr. Götz, *Die Busslehre Cyprians,* 67; Watkins, I, 195.

St. Pacian seems to indicate a confession before the presbytery when he compares the Christians who confess their sins, but refuse to accept the penance imposed, with sick persons, who indeed discover their secret wounds to *the attending physicians,* but spurn the remedy prescribed.[76] However, this passage, too, possesses no strictly argumentative force, because here as well as in the preceding passage from Cyprian the plural may have a distributive sense, as in both passages there is question of several penitents.

The result of the foregoing discussion may be summed up as follows: In the Eastern Church several texts, especially in the works of Origen, speak in favor of the theory that the priest, besides giving a private admonition, could also require a public confession of secret capital sins to be made in the presence of the assembly. Whether this custom was in vogue only in one or the other church, or for how long a period public confession of secret sins was required, cannot now be determined.

In the Western Church also several texts, especially in the works of Tertullian, Pacian, and Ambrose, seem to indicate that confession was made

[76] *Paraenesis,* c. 9: *"Nunc ad eos sermo sit, qui bene ac sapienter vulnera sua paenitentiae nomine confitentes, nec quid sit paenitentia, nec quae vulnerum medicina noverunt; similesque sunt illis, qui plagas quidem aperiunt ac tumores morbosque etiam medicis assidentibus confitentur, sed admoniti quae imponenda sunt, neglegunt et quae bibenda, fastidiunt.* (Peyrot, 115 sq.).

before the assembly. However, they may also be interpreted as referring to public penance. The rule laid down by St. Augustine: *"Corripienda sunt coram omnibus, quae peccantur coram omnibus; ipsa corripienda sunt secretius, quae peccantur secretius,"* [77] was undoubtedly followed in the penitential practice, at least after the fourth century. Leo I (459) [78] declares it to be an abuse violating the Apostolic rule to expect a penitent to make a public confession of his secret sins.

The presbytery, it is true, was the bishop's advisory board in all important affairs; but no evidence can be adduced, either for the Eastern or for the Western Church, to prove that the sinner, before

[77] *Sermo* 82, c. 7, n. 10 (Migne, *P.L.*, XXXVIII, 510). Cfr. Blötzer in *Zeitsch. f. k. Theologie,* XI (1887), 608 ff.; Schanz, *Die Lehre des hl. Augustin über das heilige Sakrament der Busse,* in *Theol. Quartalschrift,* LXXVII (1895), 599; Kirsch, *Zur Geschichte der kath. Beichte,* 72; Vacandard, *Études de Critique* (1910), 88 sq., 98; Poschmann, *Kirchenbusse und Correptio Secreta bei Augustinus* (Braunsberg, 1923).

[78] *Epist.*, 168, 2, ed. Ballerini, I (Venetiis, 1753), 1429. Cfr. c. 89 Dist. I *de Paenit.* In favor of a public confession are R. Haslehurst, *Penitential Discipline in the Early Church* (London, 1921), p. 102; McNeill, *The Celtic Penitentials* (Paris 1923), p. 77 sq.; which is not surprising when we consider the Protestant attitude of these writers. On the Catholic side, Bainvel, in his *"Note sur la Confession Sacramentelle"* (*Recherches de Science Relig.*, 1920), 212–224, has proposed the theory that in the first centuries the confession of sins was as a rule made in public in the presence of the assembly, *i. e.*, during divine service, embraced all sins, and possessed a sacramental character.

accepting the public penance, was *obliged* to confess his secret transgressions before the presbytery, and that a confession to the bishop or to the penitential priest did not suffice.

§ 3. PUBLIC PENANCE FOR SECRET SINS

In discussing public confession the further question arises: Were certain grievous sins subject to *public penance* even when they remained secret? According to the modern view, the confessor would violate the seal by imposing such a penance, and hence a discussion of this question is of great importance.

The obligation of expiating secret grievous sins by public penance is met with for the first time in the writings of St. Irenaeus (about 190). In his book *Adversus Haereses* he says that the Gnostics secretly seduced the women instructed by them, and these women frequently confessed this sin when they returned to the Church.[79] Of the heretic Marcus in particular St. Irenaeus says: The women seduced by him confessed after their return to the Church that they had been misused by him and had loved him

[79] *Adv. Haereses*, I, 6, 3: Καὶ οἱ μὲν αὐτῶν λάθρα τὰς διδασκομένας ὑπ' αὐτῶν τὴν διδαχὴν ταύτην γυναῖκας διαφθείρουσιν, ὡς πολλάκις ὑπ' ἐνίων αὐτῶν ἐξαπατηθεῖσαι, ἔπειτα ἐπιστρέψασαι γυναῖκες εἰς τὴν ἐκκλησίαν τοῦ θεοῦ σὺν τῇ λοιπῇ πλάνῃ καὶ τοῦτο ἐξομολογήσαντο. Ed. A. Stieren, I (Lipsiae, 1853), 74 sq.

very vehemently.[80] "Also in our country along the Rhone," he continues, "they seduced many women who had been seared in their conscience, of whom some submit to the public exomologesis, whereas others, ashamed to do this, secretly abandon all hope of life in God. Some fall away altogether, others vacillate to and fro and are, as the proverb says, neither in nor out." [81]

Apart from the apostasy of these women, St. Irenaeus here has in view *secret* sins, as may be plainly seen from the text.[82] After returning to the Church the seduced women often confessed these secret sins. St. Irenaeus does not state in what manner this confession was made; at all events we cannot take the "ἐξομολογήσαντο" to mean a telling of transgressions merely to warn others. The nature of those sins and the context speak against this view. However, the mere avowal did not suffice for reconciliation with the Church. Hence St. Irenaeus con-

[80] *Ibid.*, 13, 5: ἐξωμολογήσαντο καὶ κατὰ τὸ σῶμα ἠρχειῶσθαι ὑπ' αὐτοῦ καὶ ἐρωτικῶς πάνυ αὐτὸν πεφιληκέναι. (Stieren, I, 157).

[81] *Ibid.*, 13, 7: Καὶ ἐν τοῖς καθ' ἡμᾶς κλίμασι τῆς Ῥοδανουσίας, παλλὰς ἐξηπατήκασι λυναῖκας, αἵτινες κεκαυτηριασμέναι τὴν συνείδησιν αἱ μὲν καὶ εἰς ψανερὸν ἐξομολογοῦνται, αἱ δὲ δυσωπούμεναι τοῦτο, ἠσυχῇ δέ πως ἑαυτὰς ἀπηλπικυῖαι τῆς ζωῆς τοῦ θεοῦ, ἔνιαι μὲν εἰς τὸ παντελὲς ἀπέστησαν, ἔνιαι δὲ ἐπαμφοτερίζουσι, καὶ τὸ τῆς παροιμίας πεπόνθασι μήτε ἔξω μήτε ἔσω οὖσαι. (Stieren, I, 158).

[82] Thus Bickell in the *Z. f. k. Theol.* (1877), 421 f.; Probst, *Sakramente* (1872), 285; Gartmeier, *Beichtpflicht*, 81; O'Donnell, *Irish Theol. Quart.* (1910), 39 sq.

tinues: Some of these seduced women submit to the exomologesis;[83] others, however, are ashamed to do this, and consequently are not received back into the Church, while still others lost courage and apostatized. The need of "εἰς φανερὸν ἐξομολογεῖσθαι" for the readmission of these women into the Church is therefore clearly expressed by St. Irenaeus.[84] The question at issue is not whether the expression denotes a *public* and explicit *confession*[85] or merely refers to the public *expiation* of sins.[86] The former view cannot be positively proved,[87] but since all admit that our text speaks of public penance, we have

[83] For the various meanings of "ἐξομολόγησις" see Vacandard, *Études* (1910), 51 sqq.

[84] Funk, in *Theol. Quartalschrift* (1906), 551, and Adam in *Theol. Revue,* (1910), 15 connect the ἔσω οὖσαι ("being inside") with the act of doing penance, not with church-membership or communion. For the contrary opinion cfr. Stufler, *Die Bussdisziplin der abendländischen Kirche bis Kallistus* (*Zeitschrift f. kath. Theol.,* XXXI [1907], 448); Mayer, *Die Beichte,* 35; O'Donnell, *Irish Theol. Quart.* (1910), 40.

[85] In this sense Funk (in Kraus' *Realenzyklopädie,* I, 181) and Mayer (*Die Beicht,* 33) understand the passage. Haslehurst, *loc. cit.,* 67.

[86] Thus Bickell, *Zur Geschichte der Beicht im Orient* (*Z. f. k. Th.,* I [1877], 422); Rauschen, *Euch. und Bussakr.,* 185; O'Donnell, *loc. cit.,* 39 sq.; Galtier, *Pénitence* (*Diction. Apol.,* III [1916]) 1818; Watkins, I, 102; Fr. Hünermann, *Die Busslehre des hl. Augustin* (Paderborn, 1914), 109 f.

[87] In the same chapter (13) Irenaeus uses "ἐξομολογεῖσθαι" to designate public penance: τὸν ἅπαντα χρόνον ἐξομολογουμένη διετέλεσε, πενθοῦσα καὶ θρηνοῦσα. (Stieren, I, 157). Cfr. Loofs, *Leitfaden z. Stud. d. Dogmen-Gesch.*[4], 206.[7]

the following result: *Irenaeus requires public penance for secret grievous sins of chastity.*

Tertullian presents to us an equally clear testimony in his book *De Paenitentia* (203/4). In chapter IX he describes the public penitential discipline and then continues in chap. X: "Most persons flee from this practice as a self-exposure, or put it off from day to day, thinking more of their shame than of their salvation. . . . Indeed, concealing the transgression promises great advantages to the sense of honor! When we withdraw a thing from human knowledge, do we conceal it also from God? Or is it better to remain concealed and be a castaway than to be publicly absolved?" All this points to transgressions which would not be known to the assembly unless public penance was accepted.[88]

St. Cyprian likewise speaks of a public penance

[88] *"Plerosque tamen hoc opus, ut publicationem sui, aut suffugere aut de die in diem differre praesumo, pudoris magis memores quam salutis. . . . Grande plane emolumentum verecundiae occultatio delicti pollicetur! Videlicet si quid humanae notitiae subduxerimus, proinde et Deum celabimus? An melius est damnatum latere, quam palam absolvi?* (Ed. Preuschen, 15 sq.) Cfr. Probst, *Sakramente und Sakramentalien,* 282 f.; O'Donnell, *Irish Theol. Quart.* (1910), 40 sqq.; Vacandard, *Études* (1910), 81. According to Batiffol (*Études* I [5], 74 sqq.) the public penance for secret sins stands out in such bold relief in the writings of Tertullian as to leave nothing to be desired. Tixeront, *Histoire des Dogmes,* I (6th ed.) 1909, 366; K. Adam, *Die Kirchliche Sündenvergebung nach dem hl. Augustin* (Paderborn, 1917) 122; Diekamp in the *Theol. Revue,* XXI (1922), 175.

for secret sins. In his book *De Lapsis* he exhorts to penance those who, though they did not actually sacrifice to the gods, had asked for and received a certificate stating that they had complied with the emperor's decree. Probably many endeavored to justify their conduct by saying that their transgression had remained secret. St. Cyprian concedes that they are less guilty, but not on that account exempt from penance. God sees the hidden and secret things; He sees the heart of every man and judges not only his deeds, but also his words and thoughts, and clearly perceives the sentiments and the disposition which each one entertains in the innermost recesses of his soul.[89] These last words suggest to Cyprian those who thought of denying the faith, but subsequently confessed their intention and submitted to penance. These the bishop sets up as models for others.[90] It is

[89] *De Lapsis*, c. 27: "*. . . homo videt in faciem, Deus in cor . . . perspicit abdita et secreta atque occulta considerat . . . videt ille cor singulorum et iudicaturus non tantum de factis, sed et de verbis et de cogitationibus nostris omnium mentes voluntatesque conceptas in ipsis adhuc clausi pectoris latebris intuetur.*" (Ed. Hartel, 257.) Cfr. Vacandard, *l. c.*, 82; O'Donnell, *l. c.*, 42.

[90] *Ibid.*, c. 28: "*Denique quanto et fide maiore et timore meliore sunt, qui, quamvis nullo sacrificii aut libelli facinore constricti, quoniam tamen de hoc vel cogitaverunt, hoc ipsum apud sacerdotes Dei dolenter et simpliciter confitentes, exomologesim conscientiae faciant, animi sui pondus exponant, salutarem medalam parvis licet et modicis vulneribus exquirant, scientes scriptum esse: Deus non deridetur.*" (Hartel, *l. c.*)

quite plain that there is no question here of occult penance, for throughout the entire chapter St. Cyprian speaks of public penance, which he tries to induce those apostates to perform. In doing this it would be absolutely to no purpose to point to a model which no one could see. In this sense also must be understood the words of Cyprian: "He is guilty of a more grievous sin who imagines God to act in human fashion and expects to escape the punishment of his crime, because he did not commit it publicly." [91]

In the fourth century we encounter the same view in St. Pacian (+ 390) and St. Ambrose (397). Pacian begins by explaining which sins were subject to public penance. The Apostolic decree, he writes, fixed their number at three: murder, idolatry, and adultery. For the others forgiveness could be ob-

[91] *Ibid.*, c. 28: ". . . *plus immo delinquit qui secundum hominem Deum cogitans evadere se poenam criminis credit, si non palam crimen admisit.*" (Hartel, 258). Cfr. Morinus, *Comment.*, V, 13 (ed. 1651), 290. Rauschen admits in the second edition of his *Eucharistie und Bussakrament* (193 ff.), contrary to his former opinion, that public penance was imposed for secret capital sins. Cfr. Loofs, *Leitfaden* [4], 340; B. Poschmann, *Die Sichtbarkeit der Kirche nach der Lehre des hl. Cyprian* (Paderborn, 1908), 145; Tixeront, *La Confession* (*L'Université,* 1913), 115; Diekamp, *Theol. Revue,* 1922, 175; Adam, *Die kirchl. Sündenvergebung,* 123. However, H. Brewer, *"Die kirchl. Privatbusse im christl. Altertum"* (*Zeitschr. f. k. Theol.,* 1921), 11, is of a different opinion; he sees here only a private penance. Cfr. also Galtier, *"La Rémission des Péchés Moindres dans l'Eglise"* (*Recherches de Science Religieuse,* XIII [1923] 123 sq.)

tained by good works. Murder is committed not only by him who inflicts a mortal wound, but also by everyone who by advice or actual participation contributes to the deed. In like manner adultery comprises every gratification of lust outside of marriage. The sin of idolatry is amplified in a similar manner, but the precise wording of the text can no longer be determined.[92] For the above-mentioned sins Pacian requires public penance, even though they were committed in secret. In impressive language he says to the sinners: *"Rogo vos, fratres, etiam pro periculo meo, per illum Dominum, quem occulta non fallunt, desinite vulneratam tegere conscientiam. . . . Quodsi fratrum oculos erubescitis, consortes casuum vestrorum timere nolite . . . qui fratribus peccata sua non tacet, ecclesiae lacrimis adiutus Christi precibus absolvitur."* [93] In the following chapters he describes in detail the public penance which was to be performed for the above-mentioned sins.

Similarly St. Ambrose requires a public penance for secret sins. He writes: *"Si quis occulta crimina*

[92] *Paraenesis,* c. 3 and 4 (ed. Peyrot, 104 sq.). Pacian evidently bases his catalogue of capital sins on Tertullian (*De Pudicitia,* c. 5), but plainly intimates that the triad must be conceived as three catagories, each of which comprises a series of cognate delinquencies. Cfr. on this point Steitz, *Jahrbücher für deutsche Theologie* (1863), 97; P. A. Kirsch, *op. cit.,* 71; Rauschen, *op. cit.,* 186 ff.; Vacandard, *Études,* 71; Haslehurst, *Penitential Discipline,* 103.

[93] *Paraenesis ad Paenit.,* c. 8 and 9 (ed. Peyrot, 113, 115). Cfr. Morinus, *Commentarius,* V, 12; Vacandard, *l. c.,* 83.

habens propter Christum tamen studiose paenitentiam egerit, quomodo ista recipit, si ei communio non refunditur? Volo veniam reus speret, petat eam lacrimis, petat gemitibus, petat populi totius fletibus, ut ignoscatur obsecret; et cum secundo et tertio fuerit dilata eius communio, credat remissius se supplicasse, fletus augeat, miserabilior postea revertatur, teneat pedes brachiis, osculetur osculis, lavet fletibus nec dimittat ut de ipso dicat Dominus Jesus: Remissa sunt peccata eius multa, quoniam dilexit multum." [94]

The Eastern Church also has its testimonies in favor of public penance for secret sins. These testimonies are contained in the canons of the councils and in the canonical letters of St. Basil and St. Gregory of Nyssa. Without making a distinction between public and secret sins, they impose public penances for certain grievous offences, also for such as are commonly committed in secret. In case of a voluntary confession the punishment was to be mitigated, but not entirely remitted.[95] The Council of Ancyra

[94] *De Paenit.*, I, 16 (Migne, *P.L.*, XVI, 493 sq.); cfr. *De Paenit.*, II, 9 (Migne, *l. c.*, 517), II, 10 (*l. c.*, 518); Morinus, *Commentarius*, V, 14 (ed. 1651), 291; O'Donnell, *l. c.*, 43 sqq.; Tixeront, *Histoire des Dogmes*, II [4] (1912), 323; Galtier, *Diction. Apolog.*, III, 1810; Adam, *Die Kirchl. Sündenvergebung*, 129; Poschmann, *Kirchenbusse und Correptio Secreta*, 59.

[95] Cfr. Frank, *Die Bussdisziplin der Kirche* (1867), 456 ff.; Bickell, *Die Beichte im Orient* (*Z. f. k. Theol.*, I, [1877] 432 ff.); Galtier, *De Poenitentia Tractatus dogmatico-historicus* (Paris, 1923), 219 sq.

(314) in its 16th canon distinguishes in the case of unnatural vice, whether it be committed in youth or in advanced age, whether the penitent is married or single; the measure of public penance is gauged according to this rule, without any distinction between public and occult sins.[96] In the 21st canon of the same council a penance of ten years was imposed on women who were guilty of carnal sins and then committed abortion.[97] In this case also there is nearly always question of secret sin.

A notable witness is St. Basil (+ 379). In the 34th canon of his second epistle to Amphilochius, women who accuse themselves of adultery or are in any way convicted of this sin, are relegated to the last penitential station, in order not to expose them publicly and thus subject them to capital punishment.[98] The

[96] Friedr. Lauchert, *Die Kanones der wichtigsten altkirchlichen Konzilien nebst den apostol. Kanones* (*Sammlung ausgewählter kirchen- und dogmen-geschichtl. Quellenschriften von G. Krüger,* 1. Reihe, 12. Heft), Freiburg, 1896, 33.

[97] Lauchert, *l. c.,* 34; cfr. can. 23 and 25; Morinus, *Commentarius,* V, 14.

[98] *Epist. Canonica,* II, c. 34; Τὰς μοιχευθείσας γυναῖκας καὶ ἐξαγορευούσας δι' εὐλάβειαν ἢ ὁπωσοῦν ἐλεγχομένας δημοσιεύειν οὐκ ἐκέλευσαν οἱ πατέρες ἡμῶν, ἵνα μὴ θανάτου αἰτίαν παράσχωμεν ἐλεγχθείσαις, ἴστασθαι δὲ αὐτὰς ἄνευ κοινωνίας προσέταξαν, μέχρι τοῦ συμπληροῦσθαι τὸν χρόνον τῆς μετανοίας. (Migne, *P.G.,* XXXII 728 A).—The genuineness of the letters of St. Basil to Bishop Amphilochius is justly defended by Bickell (*Z. f. k. Theol.,* I [1877], 400); Funk (*Bussdisziplin* in the *Kirchenlexikon,* II [2] [Freiburg, 1883], 1572); I. B. F. Pitra (*Iuris Eccles. Graecorum Historia et Monumenta,* I [Romae,

sin in this case is therefore secret, whereas the penance is public, though milder in form. The canon presumes that there are other penitents in that fourth penitential station who do penance for lesser transgressions, and thus no one here would easily surmise an extraordinary transgression. It follows from this, that the severe canonical penance might possibly be the cause of suspecting the sin committed; furthermore, that this extenuating circumstance did not exist for *men* guilty of adultery, because from a legal point of view they did not need to fear capital punishment.[99] St. Basil quotes a number of other canons which enjoin public penance for sins naturally committed in secret. Thus for deliberate abortion,[100] for sodomy and bestiality,[101] for carnal intercourse

1864], 576 sqq.); J. Schmitz (*Die Bussbücher und die Bussdisziplin der Kirche* [Mainz, 1883] 39–45; Bardenhewer-Shahan (*Patrology,* 1908, 279), as against the objections raised by M. Molkenbuhr, *Diss. I de Tribus Epist. Can. S. Basilii,* Monasterii, 1791; Binterim, *Denkwürdigkeiten,* V, 3, 366 ff. Fuller details concerning the canonical letters of St. Basil may be found in E. Schwartz, *Buszstufen und Katechumenatsklassen* (*Schriften der wissenschaftl. Gesellschaft in Strassburg,* 7 Heft, 1911), 29–43.

[99] Balsamon (about 1200) expressly remarks in his commentary on the above-mentioned canon: Οἱ γὰρ ἄνδρες ἐξομολογούμενοι μοιχείαν ἀσυμπαθῶς ὑπόκεινται τοῖς διαληφθεῖσιν ἐπιτιμίοις. (Migne, *P.G.,* CXXXVIII, 700 A). Cfr. Binterim, *Denkwürdigkeiten,* V, 3, 330; Watkins, I, 323; Adam, *Die geheime Kirchenbusse nach dem hl. Augustin,* 56.

[100] *Epist. Can.,* I, c. 2 (Migne, *P.G.,* XXXII, 672).

[101] Can. 7 (Migne, *l. c.,* 673).

with one's own sister,[102] and for theft.[103] In a similar manner St. Gregory of Nyssa, in his letter to Bishop Letoius, distinguishes between a person who accuses himself of his own free will of secret sins against chastity, and one who is in some way convicted of them. In either case the penance is public, but is to be mitigated for him who intended to be a voluntary accuser of his secret sins.[104]

To what extent the notorious scandal in Constantinople at the time of the Patriarch Nectarius (391) influenced the penitential discipline of the East remains undecided to the present day.[105] At any rate, from the beginning of the fifth century we have no longer any positive evidence for the continuation of the practice of public penance for secret sins, although it is not improbable that also in these cases the penitential canons were still occasionally ap-

[102] *Epist. Can.,* II, c. 61 (Migne, *l. c.,* 800).

[103] C. 57 (Migne, *l. c.,* 800). Cfr. c. 58, 59, 62, 63, 69, 75. See also Galtier, *Dict. Apolog.,* III, 1823 sq.

[104] *Epist. Can. ad Letoium,* c. 4 (Migne, *P.G.,* XLV, 229 A). The genuineness of this epistle was impugned by M. Molkenbuhr, *Diss. II,* cap. III (Monasterii, 1791), but defended by Bickell, *l. c.,* 432 and 440. Cfr. Rauschen, *Euch. u. Buszsakrament,* second ed., 188; Vacandard, *Études,* 80; Watkins, I, 326.

[105] Cfr. Funk, *Abhandlungen,* I (1897), 200–204; Idem, *Theol. Quartalschr.,* LXXXI (1899), 458; K. Holl, *Enthusiasmus,* 274; H. Koch, *Zur Geschichte der Bussdisziplin und Bussgewalt in der orientalischen Kirche,* in *Hist. Jahrb.,* XXI (München, 1900), 64 ff.; Batiffol, *Études,* 150 sqq.; Schwartz, *Buszstufen,* 55 sqq.; Watkins, I, 349 sqq.

plied.[106] In the Western Church, however, the case is different. Here public penance remained in vogue a long time also for occult sins.[107] St. Augustine ex-

[106] Cfr. Funk in *Kirchenlexikon,* II,[2] 1573; Vacandard in *Dictionnaire,* III, 873.

[107] Thus Boudinhon (*Revue d'Histoire et de Litt. Relig.,* II [1897], 326). Cfr. also Morinus, *Comment.,* V, 10; Natalis Alexander, *Hist. Eccl.,* Vol. VI, diss. VI, qu. 2 (ed. 1785), 148 sqq.; Funk, *Kirchenlexikon,* II[2], 1570; Schanz, *Theol. Quart.,* LXXVII (1895), 621. Rauschen saw in the 4th canon of the Council of Neocaesarea (314) a proof that during the fourth century no public penance was demanded for secret sins. The canon reads: Ἐὰν πρόθηταί τις ἐπιθυμῆσαι [ἐπιθυμήσας] γυναικὸς συγκαθευδῆσαι μετ' αὐτῆς, μὴ ἔλθῃ δὲ εἰς ἔργον αὐτοῦ ἡ ἐνθύμησις, φαίνεται ὅτι ὑπὸ τῆς χάριτος ἐρρύσθη. (Lauchert, 35). However, if the words "φαίνεται ὅτι ὑπὸ τῆς χάριτος ἐρρύσθη," as Hefele (*Konziliengeschichte,* I[2], 246) will have it, really indicate a freedom from external penance, the only conclusion to be drawn is that public penance was required only for sins of *thought,* not for secret *deeds.* Cfr. Frank, *Bussdisziplin,* 459; Schanz, *Theol. Quartalschr.,* LXXVII (1895), 488.—Neither does the 30th canon of the Council of Hippo (393) (= c. 32 Conc. Carthag. III) offer certain evidence against public penance for secret sins. The words: *"cuiuscumque autem paenitentis publicum et vulgatissimum crimen est, quod universam ecclesiam commoverit, ante absidam manus ei imponatur"* (Lauchert, 168), require the solemn reconciliation by the bishop only for transgressions accompanied by public scandal, whereas in the case of secret sins a simple reconciliation sufficed, which in certain cases could be performed by a presbyter. However, it does not follow from this that in the second case the penance was not a public one. This explanation is favored by Morinus, *Comment.,* V, 9; Gabriel Aubespine, *Opera Varia* (ed. Neapoli, 1770), 227; Dionys. Petavius, *Animadversiones ad Haeresim Epiphanii,* 59, c. 32, § 5. (*Opp. Omn.,* VIII [Paris, 1867], 192 sq.); Natalis

pressly mentions the universal opinion that the three capital sins,—adultery, murder, and idolatry,—must be publicly expiated.[108] It was only in course of time that the principle of secret correction for secret transgressions was applied in the penitential discipline.

Even if St. Augustine did carry out this principle in the Church of Hippo, Adam,[109] who defends this view against Poschmann,[110] nevertheless admits that until then public penance also for secret capital sins

Alexander, *Hist. Eccl. Saec. IV* (ed. Bingae, 1785), tom. VI, diss. VI, p. 149; Loofs, *Leitfaden*[4], 343; Vacandard, *Études,* 98 sq.; Poschmann, *Kirchenbusse und Correptio Secreta,* 37 sq.

[108] *De Fide et Operibus,* c. 19: *"Qui autem opinantur cetera eleemosynis facile compensari, tria tamen mortifera esse non dubitant et excommunicationibus punienda, donec paenitentia humiliore sanentur: impudicitiam idololatriam, homicidium."* (Ed. Zycha, *Corp. Scrip. Eccl. Lat.,* XLI (1900), 79. F. Hünermann, *Die Busslehre des hl. Augustinus* (p. 61) says: "During the time of St. Augustine secret confession with public penance was the rule."

[109] *Die kirchliche Sündenvergebung nach dem hl. Augustin,* Paderborn, 1917, p. 119 sqq.; *Die geheime Kirchenbusse nach dem hl. Augustin,* Kempten, 1921.

[110] *Hat Augustin die Privatbusse eingeführt?* Braunsberg, 1920; *Die Kirchliche Vermittlung der Sündenvergebung nach Augustin,* in the *Zeitschrift für kath. Theologie,* XLV (Innsbruck, 1921) 208–229; 405–432; 497–526; *Kirchenbusse und Correptio Secreta bei Augustin,* Braunsberg, 1923; cfr. P. Schmoll, *Zur Kontroverse über die Kirchenbusse des hl. Augustin* in the *Theol. Quartalschrift,* CIII (Tübingen, 1922) 56–63; A. Koeniger in the *Zeitschrift d. Savigny Stiftung für Rechtsgeschichte,* Kan. Abt., XII (Weimar, 1922), 463–72.

was the rule outside of this church.[111] That this continued for a while after St. Augustine, at least in principle,—except in the Irish and the Anglo-Saxon churches—will be demonstrated later.[112] This in spite of the fact that traces of private penance are met with before St. Augustine. Of late quite a number of monographs [113] have been published on this subject, which have met with a great deal of criticism, and the matter is by no means fully cleared up.[114] In my opinion Stufler [115] and others go too far when they say that with Origen, Cyprian, and Ambrose public penance is restricted to public transgressions or in case of secret transgressions left to to the free will of the penitent. Such an interpretation does not do justice to the texts, nor is it re-

[111] *Die geheime Kirchenbusse,* p. 58 sq., 69 sq.

[112] See p. 57 sqq.

[113] Besides the quoted works of K. Adam, A. d'Alès, *L'Édit de Calliste,*[2] Paris 1914, pp. 422–455; P. Galtier, *Augustin a-t-il confessé,* in the *Revue Pratique d'Apologétique,* XXXII (1921) 65–80; 212–224; 257–275; H. Brewer, *Die kirchliche Privatbusse im christl. Altertum,* in the *Zeitschrift für kath. Theol.,* XLV (1921) 1–42; P. Galtier, *La rémission des péchés moindres dans l'église du III^e^ au V^e^ siècle,* in the *Recherches de Science Réligieuse,* XIII (1923) 97–129.

[114] Cfr. Fr. Diekamp, in the *Theol. Revue,* XXI (Münster, 1922) 169–176; E. Amann, in the *Revue des Sciences Religieuses,* III (Strasbourg, 1923) 119–128; d'Alès, in the *Recherches de Science Réligieuse,* XI (1921) 270 sq.

[115] *"Oeffentliche und geheime Busse bei Origenes,"* in the *Zeitschrift für Kath. Theol.,* XXXVII (1913) 193 sqq.; and XLVI (1922).

quired by the Council of Trent, which by its canon 6, Sess. XIV, intended only to meet the Protestant contention that the Sacrament of Penance as we have it is a purely human institution.[116]

[116] Cfr. Galtier, *De Poenitentia,* Paris, 1923 p. 320; Amann, in the *Revue des Sciences Rel.,* 1923, p. 127; Honoré, *Le Secret de la Confession,* 1924, p. 20.

PART I

HISTORY OF THE SEAL OF CONFESSION UNTIL THE CLOSE OF THE DECRETALS OF GREGORY IX (1234)

§ I. THE FIRST BEGINNINGS OF THE SEAL—GRADUAL DISAPPEARANCE OF PUBLIC CONFESSION

From what has been said in the introduction it is not surprising that we meet with no regulations regarding the Seal of Confession in the first centuries. Public confession, as it is described, *e. g.*, by Origen, was a divulging of sins, although it was done by the penitent. Likewise from the nature and duration of public penance an *a posteriori* inference could be drawn as to the sins committed.[1] Hence, the Fathers of the early centuries never appeal to the law of the seal when they speak of confession or penance.[2]

Nevertheless indications that sins confessed were kept secret may be traced back to very early times.

[1] *"Die Bussdisziplin,"* in Kraus' *Realenzyklopädie,* I, 185; cfr. Rauschen, *Euch. u. Buszsakr.,* 2nd ed., p. 247.

[2] Cfr. Vacandard, *Diction.,* III (1908), 859.

Thus Sozomen deduces the institution of the penitentiary priest from the tendency to restrict the public confession of sins. As an indispensable quality in a penitentiary priest he requires above all silence.[3] This was of importance especially in the case of those sins which the penitent did not himself confess in public.

In the fourth century the Syrian Church Father Aphraates (+ after 345) [4] speaks still more plainly.[5] Comparing sinners to soldiers wounded in battle, he

[3] *Hist. Eccles.*, VII, 16: φορτικὸν ὡς εἰκὸς ἐξ ἀρχῆς τοῖς ἱερεῦσιν ἔδοξεν ὡς ἐν θεάτρῳ ὑπὸ μάρτυρι τῷ πλήθει τῆς ἐκκλησίας τὰς ἁμαρτίας ἐξαγγέλλειν πρεσβύτερον δὲ τῶν ἄριστα πολιτευομένων ἐχεμυθόν τε καὶ ἔμφρονα επὶ τοῦτο τετάχασιν (Migne, *P.G.*, LXVII, 1460 A); cfr. Vacandard, *Études*, 86.

[4] The homily from which we quote was written in the year 337. Cfr. Bickell, *Ausgewählte Schriften der syrischen Kirchenväter* (Kempten, 1874), 12; Bert, in *Texte u. Untersuchungen* of Gebhard-Harnack, III (1888), Heft 3 and 4, Introd. x.

[5] Bickell remarks (*op. cit.*, 88, note) that this passage must not be understood of the Seal, but merely contains an admonition to the confessor to take no account of the insistent demand for a public confession so common in the early days of Christianity. However, Bickell seems to have abandoned this opinion three years later in his treatise *"Zur Geschichte der Beicht im Orient während der ersten vier Jahrhunderte"* (*Z. f. k. Theol.*, I [1877], 417 ff.), where he applies the quoted passage to public penance and declares that it is a very precarious and improbable assumption that public confession was regularly and frequently demanded for secret sins. (Cfr. *op. cit.*, 428.) If Aphraates insisted on restricting public penance in cases of secret sins, this was certainly laying stress on the necessity of keeping the sins confessed secret. Cfr. Kirsch, *op. cit.*, 74; Vacandard, *Études*, 97 f.

thus admonishes confessors: "To him who shows you his wounds apply the healing penance. Exhort him who is ashamed to lay bare the injury, that he may not conceal it from you. *Do not expose him* who manifests it to you, lest on his account the innocent also be held guilty by haters and enemies." [6] Consequently Aphraates demands for secret sins only a secret confession and silence on the part of the confessor.

St. Ephraem (+ 373) says of his friend, the priest Abraham of Kidun, that he treated sinners with great circumspection and did not divulge their secret faults, in order not to offend them and expose them to contempt.[7]

Asterius of Amasea (towards the close of the fourth century) in a homily on penance exhorts the sinner: "Have courage and tell to him [the priest] what is hidden; reveal to him the interior of your heart, as you would concealed wounds to your

[6] See the Syrian and Latin text of this passage in A. Graffin's *Patrologia Syriaca,* I (Paris, 1894), 318, n. 4. Cfr. Batiffol, *Études d'Histoire,* 6th ed., (1920), 335.

[7] "*Inflicto gravi dolore ad nociva resecanda medebatur et curabat, ut sanitatem roboraret. Attente inspecto in homine vulnere illud non proditum adurebat et hominem instruebat. . . . Non detegens eum qui peccaverat, ne eum laederet contemptibilemque redderet. Absque verbere magnum dolorem excitabat et peccatum confusione sapienter operiebat.*" *S. Ephraem Syri Hymni et Sermones,* ed. Th. Lamy, III (Mechlin, 1889), 806. Cfr. Stufler, *Zur Busslehre des hl. Ephraem* (*Zeitschr. f. k. Th.,* 1914, 338).

physician. He will take care of your reputation as well as your cure." [8]

Similar allusions to the obligation of silence are met with in the Western Church. Tertullian, while emphatically demanding public penance before the assembly of the faithful, nevertheless insists that the knowledge of the sins committed be confined to the congregation. The penitent, he says, need not be apprehensive, for no one will look down upon him, but all, being members of the same body, will sympathize with him in his affliction.[9]

St. Paulinus writes of the great bishop, St. Ambrose: "As often as anyone confessed his sins to him for the purpose of submitting to penance, he wept so bitterly as to move the penitent to tears. . . . *Of the transgressions, however, which the penitent confessed, he spoke to no one but God,* with whom he interceded, leaving a beautiful example to future

[8] . . . δεῖξνον αὐτῷ ἀκερυθριάστως τὰ κεκρυμένα γύμνησον τῆς ψυχῆς ἀπόρρητα, ὡς ἰατρῷ πάθος δεικνύων κεκαλυμμένον, αὐτὸς ἐπιμελήσεται καὶ τῆς εὐσχημοσύνης καὶ τῆς θεραπείας. (Migne) *P.G.* XL, 369 B).

[9] *De Paenit.*, c. 10: *"Certe periculum eius tunc, si forte, onerosum est, cum penes insultatores in risiloquio consistit, ubi de alterius ruina alter attollitur, ubi prostrato superscenditur. Ceterum inter fratres atque conservos, ubi communis spes, metus, gaudium, dolor, passio . . . quid tu hos aliud quam te opinaris? Quid consortes casuum tuorum ut plausores fugis? Non potest corpus de unius membri vexatione laetum agere; condoleat universum et ad remedium collaboret necesse est."* Preuschen, *op. cit.*, 15; cfr. O'Donnell, *Irish Theol. Quart.* (1910), 47; Vacandard, *Études*, 94.

priests, that they should be intercessors before God rather than accusers before men." [10] Even if this passage did not refer to private confession, but to a confession made before the presbytery,[11] it shows the endeavor of St. Ambrose to conceal the sins confessed.

St. Basil (+ 379) is probably the first writer to

[10] *Vita S. Ambrosii,* c. 39: *"Quotiescumque illi aliquis ob percipiendam paenitentiam lapsus suos confessus esset, ita flebat, ut et illum flere impelleret. . . . Causas autem criminum quae illi confitebatur, nulli nisi Domino soli, apud quem intercedebat, loquebatur, bonum relinquens exemplum posteris sacerdotibus, ut intercessores apud Deum magis sint quam accusatores apud homines."* (Migne, *P.L.,* XIV 40). The reading: *"causas criminum quae illi* [*sc. Ambrosio*] *confitebatur* [*sc. paenitens*]," it seems to me, is to be preferred to the one which Ballerini has (VI, 900): *"causas . . . quas illi* [*sc. paenitentes*] *confitebantur";* for in the immediately preceding sentence we read: *"Quotiescumque illi aliquis . . . lapsus suos confessus esset."* Cfr. O'Donnell, *Irish Theol. Quart.* (1910), 49 sq.; Watkins, I, 434.

[11] P. A. Kirsch, who follows the text of Ballerini, seems to interpret our passage in this sense when he writes (p. 67): "The passage from Paulinus must by no means be urged as a proof for the existence of private confession. Apart from every other consideration, the expression *criminum* is opposed to this interpretation. The true significance of the passage is disclosed to us by the word *causas."* In other words, the silence of St. Ambrose does not exclude the imposition of a public penance. This opinion is shared by Poschmann, *Kirchenbusse und Correptio Secreta,* 59 sqq.; Diekamp, *Theol. Revue,* 1922, 173; Koeniger, *Zeitschr. der Savigny-Stift. für Rechtsgesch.,* Kan. Abt., 1922, 467 sq.; it is denied by Adam, *Kirchl. Sündenvergebung* (129–132), who sees here a case of private ecclesiastical penance.

mention an ecclesiastical ordinance for safeguarding the secrecy of confession. In the 34th canon of his second letter to Amphilochius he writes: "Our fathers did not wish that women who contaminated themselves with adultery, and who accuse themselves out of fear, or are found guilty, should be publicly exposed." [12] True, St. Basil does not support this ordinance by a reference to the Seal; he declares it to be a precautionary measure, which seemed necessary on account of the civil law,—"in order that we may not offer an occasion for capital punishment." [13] Hence this mitigation of the canonical penance: "They decreed that the penitents, without partaking of holy communion, remain in the company of the 'standing' until their term of penance had expired." [14]

The rudiments of the Seal are recognizable in these passages, which show an endeavor on the part of the Church to remove everything that might deter the faithful from confessing their sins. Nevertheless, men were still far removed from the modern idea of the Seal of Confession; otherwise the conduct which Paulinus praises so highly in St. Ambrose would have been regarded as a matter of course. The concluding phrase: *"bonum relinquens exemplum*

[12] See the text *supra,* p. 35, note 98; cfr. Schwartz, *Buszstufen,* 55.

[13] *ἵνα μὴ θανάτου αἰτίαν παράσχωμεν ἐλεγχθείσαις.* (Migne, *P.G.,* XXXII, 727 A).

[14] *ἵστασθαι δὲ αὐτὰς ἄνευ κοινωνίας προσέταξαν, μέχρι τοῦ συμπληροῦσθαι τὸν χρόνον τῆς μετανοίας.* (Migne, *l. c.*).

posteris sacerdotibus, ut intercessores apud Deum magis sint quam accusatores apud homines," seems to confirm this view.

The fifth canon of the Sixth Council of Carthage (419) may also find a place here. Some one confesses a secret transgression to his bishop, but refuses to do public penance. The bishop excommunicates him, pleading as a reason the fact that the transgression had been confessed to him. The Council decided that the charge made by the bishop merits no faith in this case. It even went so far as to say that the other bishops should disfellowship him as long as he persisted in his purpose, in order to render him more careful in making charges which he could not substantiate by other evidence.[15] The words *"si episcopus dicit aliquem sibi soli proprium crimen fuisse confessum"* do not necessarily point to a sacramental confession.[16] Nevertheless, different cir-

[15] *"Placuit, ut, si quando episcopus dicit aliquem sibi soli proprium crimen fuisse confessum atque ille neget et paenitere noluerit, non putet ad iniuriam suam episcopus pertinere, quod illi soli non creditur, etsi scrupulo propriae conscientiae se dicit neganti nolle communicare. Quamdiu excommunicato non communicaverit suus episcopus, eidem episcopo ab aliis non communicetur episcopis, ut magis caveat episcopus, ne dicat in quemquam, quod aliis documentis convincere non potest."* (*Cod. Ecclesiae Afric.*, c. 132 f.; ed. Bruns, *Canones Apost. et Concil. Saeculorum IV–VII* (Berolini, 1839), I, 195 (=c. 3, C. VI, q. 2).

[16] Against this interpretation may be quoted: the *Glossa Ord.* in c. 2, C. VI, qu. 2; De Lugo, *De Sacram. Paenit.*, disp.

cumstances seem to suggest it. In the first place, it is difficult to understand why anyone should make a private avowal of his sins to the bishop, unless it were done with the intention of obtaining forgiveness. Furthermore, the penance is expressly associated with the confession.[17] Add to this consideration the fact that no clear distinction was made between the external and internal forum in those days.[18] Hence the scruples of the bishop to continue in fellowship with a secret sinner, whom, on the other hand, he could not excommunicate and *compel* to do penance, because witnesses were lacking, and the bishop would have to be accuser and judge in one person. The only thing he could do, therefore, was to exhort the delinquent to stay away voluntarily from the assembly of the faithful and to assume the public penance. In this sense must be understood the words of St. Augustine: *"Nec prodo nec negligo,*

XXIII, n. 19; Blötzer in the *Z. f. k. Theol.,* XI, 623; Hinschius, *Kirchenrecht,* IV, 130.[6]

[17] This interpretation of the canon seems to be that of Fulgentius Ferrandus (+ 546), *Breviatio Canonum,* c. 73 (Migne, *P.L.,* LXVII, 953 C); Burchard of Worms (+ 1025), *Decretum* XIX, c. 127 (Migne, *P.L.,* CXL, 1008 C); Ivo of Chartres (+ about 1115) *Decretum,* V, c. 363 (Migne, *P.L.,* CLXI, 433 A); Balsamon (+ about 1200), in *Synod. Carthag.* (Migne, *P.G.,* CXXXVIII, 424); it is certainly that of Morinus, *Comment.,* l. II, c. 15; Kraus, *K.-G.,*[4] 108; Poschmann, *Hat Augustin die Privatbusse cingeführt?* p. 7[2]; *Kirchenbusse und Correptio Secreta,* 39[1]; the contrary view is held by K. Adam, *Geheime Kirchenbusse,* 54.

[18] Cfr. Morinus, *l. c.,* I, 10; Rauschen, *op. cit.,* 217 ff.

corripio in secreto, . . . persuadeo paenitentiam," [19] and those of Innocent I (401–417) in his letter to Bishop Exsuperius: *"Non habent latentia peccata vindictam."* [20]

However, no evidence for or against the Seal can be gathered with any degree of certainty from the quoted canon, though indirectly the decision of the Council constituted a safeguard for the secrecy of confession.

St. Augustine (+ 431) in his writings (especially *Sermo* 82) repeatedly emphasizes that he endeavors to heal secret sins in secret, without exposing them, and lays down the general rule: *"Sic agamus et sic agendum est, non solum quando in nos peccatur, sed quando peccatur ab aliquo, ut ab altero nesciatur. In secreto debemus corripere, in secreto arguere, ne volentes publice arguere, prodamus hominem . . . corripio in secreto, pono ante oculos Dei iudicium, terreo cruentam conscientiam, persuadeo poenitentiam . . . non coram te corripio, quia curare volo, non accusare . . . nos non prodimus palam, sed in secreto arguimus. Ubi contigit malum, ibi moriatur malum."* [21] That these passages need not be interpreted, as they are by Adam,[22] in the sense of a secret

[19] *Sermo* 82, 8 (Migne, *P.L.*, XXXVIII, 511).

[20] Migne, *P.L.*, XX, 499 B.

[21] Migne, *P.L.* XXXVIII, 511.

[22] *Kirchl. Sündenvergebung,* 132 sqq.; *Die geheime Kirchenbusse,* 17 sqq.

atonement, Poschmann [23] has proved. At any rate they show that St. Augustine did not publicly reprove secret transgressions, but insisted in secret on accepting the penance, and thus did not divulge the transgression itself. In this sense St. Augustine may be cited as a witness to the Seal of confession, although he nowhere expressly mentions a direct precept.

Very important and interesting evidence in favor of the Seal is furnished by Pope Leo I. In the year 459 he addressed a letter to the bishops of Campania, Samnium, and Picenum. In these places it was customary, when public penance was accepted, to read publicly in church, not only the names of the penitents, as was the custom also in other places,[24] but also the transgressions for which each one did penance. This practice caused the Pope to write a letter which may appropriately be called the first papal decretal safeguarding the secret of confession. On account of its importance we shall quote the Latin text here: . . . *"Iliam etiam contra apostolicam regulam praesumptionem, quam nuper agnovi a quibusdam illicita usurpatione committi, modis omnibus constituo submoveri. De paenitentia scilicet, quae a fidelibus postulatur, ne de singulorum peccatorum genere libello scripta professio publice recitetur;*

[23] *Kirchenbusse und Correptio Secreta,* 22 sqq.

[24] Cfr. H. J. Schmitz, *Bussbücher und Bussdisziplin* (1883), 70.

cum reatus conscientiae sufficiat solis sacerdotibus indicari confessione secreta. Quamvis enim plenitudo fidei videatur esse laudabilis, quae propter Dei timorem apud homines erubescere non veretur, tamen quia non omnium huiusmodi sunt peccata, ut ea qui paenitentiam poscunt, non timeant publicare, removeatur improbabilis consuetudo, ne multi a paenitentiae remediis arceantur, dum aut erubescunt aut metuunt inimicis suis sua facta reserari, quibus possunt legum constitutione percelli. Sufficit enim illa confessio, quae primum Deo offertur, tunc etiam sacerdoti, qui pro delictis paenitentium precator accedit. Tunc enim plures ad paenitentiam poterunt provocari, si populi auribus non publicatur conscientia confitentis." [25] In this passage we can plainly distinguish three parts: (1) the facts, (2) the law, and (3) the reasoning process.

Leo calls the facts a custom (*consuetudo*), according to which the secret transgressions of the penitents were written down when the public penance was accepted and the record was read in open assembly. The point in question, therefore, was not the voluntary confession on the part of the guilty sinner, but the publication of the sins confessed by the ministers of the Church.[26] The heading of the let-

[25] Ballerini, I, 1429; cfr. Gratian, c. 61 and 89, D. I *de Paen.*

[26] In this sense the passage is understood by R. Bellarmine, *De Paenit.*, I, 21 (*Opera Omnia,* III [Romae, 1838] 882);

ter: *"Leo universis episcopis per Campaniam, Samnium et Picenum constitutis,"* seems to indicate that the custom mentioned obtained in several places, although it was not general (*"quam nuper agnovi a quibusdam committi"*). As to the origin of this custom it seems that Leo considered it an abuse that had been but recently introduced. Most probably it harked back to an older custom of public confession, which had been preserved in a peculiar form.[27] The Pope's appeal to the *regula apostolica* proves, however, that the public confession of secret sins had long ceased to be in vogue, at least in the Roman Church.[28] On the other hand, the action of the bish-

Binterim, *Denkwürdigkeiten,* V, 3, 321, 324; Bickell, *"Zur Gesch. der Beicht im Orient"* (*Z. f. k. Theol.,* I [1877], 417 ff.); Blötzer, *"Die geheime Sünde in der altchristl. Bussdisziplin," l. c.,* XI (1887), 599; P. A. Kirsch, *Zur Gesch. der kath. Beichte,* 80; P. Batiffol, *Études,* I,[5] 153; Vacandard, *La Confession* (*Dictionnaire de Théol. Cath.,* III, 858). Other authorities agree with Frank (*Bussdisziplin,* 390) that there was question of a public confession on the part of the penitent. The former interpretation is to be preferred, if only for the reason that penitents who were mostly illiterate could not be expected to write down and read off their sins. It is more natural to suppose that the list which contained the names of the public penitents also recorded the delinquencies of each individual, and both lists were read out aloud. (Cfr. Schmitz, *Bussbücher* [1883], 70).

[27] Cfr. Vacandard, *La Confession* (*Dictionnaire de Théol.,* III, 858).

[28] Cfr. P. A. Kirsch, *Zur Gesch. der kath. Beichte,* 80[3]; Vacandard, *Études* (1910), 89.

ops shows that in the provinces named there obtained a view of the Seal which differed radically from that of a later period.

The second part of the papal letter, which states the law, is as clear as it is positive: The improper proceeding must by all means cease (*"illam . . . praesumptionem omnibus modis constituo submoveri,"* and *"removeatur improbabilis consuetudo"*). These words contain a strict injunction, referring, it is true, to a special case, but of universal force in consequence of the arguments cited for it. The Pope starts by acknowledging voluntary confession as something praiseworthy *per se* (*"quamvis plenitudo fidei videatur esse laudabilis, quae propter Dei timorem apud homines erubescere non veretur"*); but he is equally positive in his opposition to converting this practice into a universally binding law[29] (*"tamen non omnium huiusmodi sunt peccata, ut ea qui paenitentiam poscunt non timeant publicare"*); first, because shame or fear of legal prosecution would deter many from the salutary remedy of penance (*"ne multi a paenitentiae remediis arceantur, dum aut erubescunt aut metuunt inimicis suis sua facta reserari, quibus possunt legum constitutione percelli"*); secondly, because the manifestation of conscience (secret sins) in secret confession to the

[29] Leo, therefore, did not mean to forbid voluntary public confession. (Cfr. Rauschen, *l. c.*, p. 185.)

priests [30] fully suffices and has for a long time been customary in the Church (*"cum reatus conscientiae sufficiat solis sacerdotibus indicari confessione secreta"*). True, Pope Leo does not expressly appeal to a divine law, but he indirectly supposes such a law by citing in favor of his decision those reasons from which we deduce the divine law (*"ne multi a paenitentiae remediis arceantur"* and *"plures ad paenitentiam poterunt provocari, si populi auribus non publicatur conscientia confitentis"*). In conclusion, he lays down the rule that the confession which is made in the first place to God and then to the priest (bishop), who acts as intercessor for the sinner, should suffice. Pope Leo is therefore the first who plainly and unequivocally demands only secret confession and strict silence on the part of the confessor.[31]

[30] During the first centuries the *"sacerdos"* of each church was the bishop. Cfr. Batiffol, *Études d'Histoire,* I, 145; Vacandard, *La Confession* (*Diction. de Théol.,* III, 845).

[31] In saying this we do not mean that Leo I introduced secret or private confession, as Pijper (*Geschiedenis der Boete en Biecht,* I; s'Gravenhage, 1891), 273, asserts, or that this Pope was the first to formulate the duty of the Seal, as Lea (*A History of Auricular Confession and Indulgences in the Latin Church,* I [Philadelphia, 1896], 416, asserts. The former opinion has been abandoned long ago even by Protestants. Cfr. E. Loening, *Gesch. des deutschen Kirchenrechts,* I, 269 ff.; Watkins, I, 418 sqq.; J. Bessler, *"Zeugniss Leo's d. Grossen für die Ohrenbeichte und die Absolutionsgewalt des Priesters"* (*Rottenburger Monatsschrift* [1925], 303–308.

The same view we encounter 100 years later in the Eastern Church. A decree of the Second Synod of Dwin in Armenia (554) [32] shows us the rigor with which secrecy was enforced on confessors. In the 20th canon we read: "A priest who reveals the confession of the penitents shall be deposed with anathema." [33]

A passage of St. John Climacus (+600) undoubtedly refers to the Seal. In his treatise *"Ad Pastorem"* he writes: "We nowhere find that God reveals the sins which have been confessed, lest through such a revelation the penitents be disheartened and rendered incurable in their disease." [34] Pas-

[32] Ter Minassiantz in his treatise, *Die armenische Kirche in ihren Beziehungen zu den syrischen Kirchen* (Leipzig, 1904; *Texte und Unters.* by Gebhard-Harnack, *Neue Folge,* XI, 4) has convincingly proved that this synod took place during the incumbency of the Katholikos Nerses II (548/549—556/557), in the 24th year of King Chosro's reign, *i. e.,* A.D. 554.

[33] Mechitananz, *Gesch. der Konzilien der armenischen Kirche* (Walarshapat, 1874), 80. For the exact translation of this canon I am indebted to Prof. S. Weber of Freiburg.—Similar passages in favor of the Seal in the Orient, *e. g.,* those quoted by Denziger in his *Ritus Orientalium,* I (Wirceburgi, 1858), 100 and 400, belong for the most part to a later period or have not been sufficiently investigated to be used as evidence.

[34] C. 13: *Οὐδαμοῦ θεὸς ἐξομολογήσεως ἀκούσας δημοσιεύσας φαίνεται, ἵνα μὴ τοὺς ἐξομολογμένους διὰ τοῦ θριάμβου ἀνακόψῃ καὶ λοιπὸν αὐτοὺς ἁνίατα νοσεῖν παρασκευάζῃ.* (Migne, *P. G.,* LXXXVIII, 1196 B.) Cfr. Lenglet du Fresnoy, *Traité Historique et Dogmatique du Secret Inviolable de la Confession* (Lille, 1708), 20 ff.; O'Donnell, *Irish Theol. Quart.* (1910), 50.

sages like this one, though sporadic, give us sufficient information of the importance attached to the Seal in the Eastern Church.

For the period after Leo I, until the ninth century, we find in the Western Church no documentary evidence concerning the Seal, neither in the decrees of the councils nor in the penitential books in use during this period. Vacandard sees in this a proof that the rule of St. Augustine: *"Corripienda sunt secretius, quae peccantur secretius,"* which received, so to speak, an official application to confession in the letter of Leo I, had passed into general practice.[35]

§ 2. FURTHER DEVELOPMENT OF THE SEAL.—GRADUAL DISAPPEARANCE OF PUBLIC PENANCE FOR SECRET SINS

In spite of the vigor with which Pope Leo had insisted on secret confession and consequent silence on the part of the confessor, public penance for certain secret sins continued in practice for some time, and no one considered this as a violation of the Seal.[36] Pope Leo in his above-quoted letter by no means cen-

[35] *La Confession* (*Diction. de Théol.,* III, 890).

[36] Cfr. *supra* p. 38, note 107; Vacandard, *La Confession* (*Diction. de Théol.,* III, 890); Loofs, *Leitfaden,*[4] 340,[4] calls this a "semi-public" penance because confession and reconciliation were performed in secret, whilst the penance imposed was performed in public.

sured the acceptance of public penance for secret sins, but solely the divulging of the latter. In another letter addressed to Bishop Rusticus of Narbonne he demanded public penance for certain grievous sins, without distinguishing whether the transgressions had remained secret or had been exposed.[37] Sidonius (+482) plainly speaks of public penance for secret sins as still in vogue.[38]

A further confirmation of this view is furnished by the collections of canons and the conciliar decrees of that period. There is, first of all, the collection of Dionysius Exiguus (about 500);[39] then, for the African Church, the collection of the deacon Fulgentius Ferrandus (before 546),[40] and that of Cresconius (690);[41] in Gaul the so-called *Quesnelliana*

[37] *Epist.*, 167, Inqu. 19: *"Si convivio solo gentilium et escis immolaticiis usi sunt, possunt ieiuniis et manus impositione purgari . . . si autem aut idola adoraverunt aut homicidiis vel fornicationibus contaminati sunt, ad communionem eos nisi per paenitentiam publicam non oportet admitti."* (Migne, *P.L.*, LIV, 1209 B). Cfr. Morinus, *Commentarius*, V, 10 (ed. 1651), 282.

[38] *Epist.*, l. IV, 13: *"Quoniam nemo ferme est, qui plectibilibus careat occultis, ipse super his quae clam commissa reminiscitur, palam fusa satisfactione solvatur."* (Migne, *P.L.*, LVIII, 519 B). Cfr. Grupp, *Kulturgeschichte der röm. Kaiserzeit*, II (München, 1904), 356 ff.

[39] Migne, *P.L.*, LXVII, 139 ff. Cfr. Friedr. Maassen, *Geschichte der Quellen und der Literatur des kanon. Rechts*, I (Graz, 1870), 422 ff.

[40] Migne, *P.L.*, LXVII, 950 ff.; Maassen, *l. c.*, 799 ff.

[41] Migne, *P.L.*, LXXXVIII, 829 ff.; Maassen, *l. c.*, 806 ff.

(about 500);[42] in Spain the *Capitula Martini Episcopi Bragensis* (563)[43] and the *Collectio Hispana* (after 589).[44] Although these collections possess no official character, their importance must not be underrated. Their purpose was above all a practical one, namely, to serve as a means of information regarding the canons and to facilitate their observance. In as much as no official collection existed,[45] these private collections soon acquired great renown and were as a matter of fact decisive in the ecclesiastical jurisprudence of the times.[46] Now, in these collections we find unaltered certain canons of former councils which decree public penance for secret sins. I will call attention only to the decrees of Ancyra, especially to canons 15 and 16, which treat of unnatural and, therefore, as a rule secret sins against chastity; to canon 20, which punishes adultery by a penance of 7 years, and to canon 21, which punishes abortion, in case of unlawful intercourse, by a penance of 10 years. These canons recur unaltered in the collection of Dionysius,[47] in the *Breviatio*

[42] Migne, *P.L.*, LVI, 899 ff.; Maassen, *l. c.*, 846 ff.

[43] Migne, *P.L.*, LXXXIV, 574 ff.; Maassen, *l. c.*, 802 ff.

[44] Migne, *P.L.*, LXXXIV, 23 ff.; Maassen, *l. c.*, 667 ff.

[45] With the exception, perhaps, of the collection of canons issued by the Council of Carthage, 419; cfr. Maassen, *l. c.*, 4 ff.

[46] Cfr. Maassen, *l. c.*

[47] C. 35, 36 = Ancyr., c. 15, 16; c. 39, 40 = Ancyr., c. 20, 21. Cfr. Migne, *P.L.*, LXVII, 154, 155.

Canonum of Fulgentius Ferrandus,[48] in the *Concordia Canonum* of Cresconius,[49] in the *Quesnelliana,*[50] in the *Capitula Martini,*[51] and in the *Collectio Hispana.*[52]

Numerous conciliar decrees of the 6th and 7th centuries speak against the assumption that a general juridical relaxation had taken place in regard to public penance for secret capital sins. Especially in Spain and in Gaul, where many synods were held during that period, there was a decided tendency to maintain the ancient canons.[53] The Second Council of Toledo (531) decreed that the regulations of former councils, which had been neglected, should be re-enforced.[54] The Fifth Council of Arles (554) exhorts the people to continue to obey the ancient canons, which it did not wish to invalidate, but merely

[48] C. 148, 149 = Ancyr., c. 15, 16; c. 151, 152 = Ancyr., c. 20, 21. Cfr. Migne, *P.L.,* LXVII, 957.

[49] C. 99 = Ancyr., c. 15, 16; c. 102, 103 = Ancyr., 20, 21. Cfr. Migne, *P.L.,* LXXXVIII, 826.

[50] Cap. III, c. 17 = Ancyr. 15; c. 20, 21 = Ancyr. c. 20, 21. Cfr. Migne, *P.L.,* LVI, 439 sq.

[51] C. 76 = Ancyr., c. 20; c. 77 = Ancyr., c. 21; c. 81 = Ancyr., c. 15. Cfr. Migne, *P.L.,* LXXXIV, 584 f.

[52] C. 16, 17 = Ancyr., c. 15, 16; c. 20, 21 = Ancyr., c. 20, 21. Cfr. Migne, *P.L., l. c.,* 107, 108.

[53] Cfr. Maassen, *Gesch. der Quellen,* I, 642 ff.; H. J. Schmitz, *Die Bussbücher und das kanon. Bussverfahren* (Düsseldorf, 1898), 8 ff.

[54] *Proleg.: "Si qua vero in anterioribus conciliis sunt decreta, sed abusione temporum hactenus sunt neglecta, redivivae ordinationis censuram obtineant";* ed. Th. Bruns, *Canones,* I, 207.

to add to.[55] At the First Council of Braga (563) the decrees of the general as well as those of the particular synods were read from a collection of canons and the observance of them was urgently inculcated upon the clergy, under pain of removal from office.[56] Of similar tenor were the decrees of the Councils of Tours (567),[57] Macon (583),[58] Paris (614),[59] Chalons (639–654).[60] The idea constantly recurs in all these synods: Faithfully observe the canons of former councils. Although the penitential canons are not expressly mentioned, there is no reason to presume an exception in their favor,[61] for, as has been

[55] *Proleg.: "Ut frequentius aggregatis episcopis statuta canonum saepius relegendo . . . commendet ut quod statutum est irreprehensibiliter debeat custodiri."* Cfr. Fr. Maassen, *Concilia Aevi Merovingici* (*Mon. Germ.*, LL., Sect. III, 1 [1893]), 118. Cfr. also *Conc. Arelat.* (524), *Proleg.;* Maassen, *l. c.*, 36; *Concl. Aurel. III* (538), *Proleg.*, and *Conc. Aurel. V* (549), c. 23; Maassen, *l. c.*, 73, 108.

[56] C. 17: . . . *"Relecti ex codice coram concilio tam generalium synodorum canones quam localium"* . . . c. 22: *"Placuit, ut quaecumque praecepta antiquorum canonum, quae modo in concilio recitata sunt, nullus audeat praeterire; si quis autem quasi contumax transgreditur illa, necesse est, ut de suo degradetur officio."* Bruns, II, 32, 36.

[57] Cfr. Maassen, *Concilia*, 122.

[58] *Proleg.*, Maassen, *l. c.*, 156.

[59] C. 1: *"Primo in loco, ut canonum statuta in omnibus conserventur et quod per prolixa temporum spatia praetermissum est vel deinceps perpetualiter observetur."* Maassen, *l. c.*, 186.

[60] C. 2: *"Canonum vero statuta ab omnibus intemerata serventur."* Maassen, *l. c.*, 209.

[61] Cfr. H. J. Schmitz, *Bussbücher* (1898), 23. The Third

shown above, those canons were to be found in the collections in use at that time in the Spanish and Gallican Churches.

However, it cannot be denied that since the fifth century a milder view gradually began to assert itself. We find the first traces of it in a homily ascribed to St. Augustine. The author, while demanding public penance for grievous offences because of the scandal given, says it is left to the bishop to decide as to the expediency of a public penance.[62]

Gennadius (+ 495), Julian Pomerius (500), and Caesarius of Arles (542) seem merely to have recommended public penance for secret sins, but not as a strict obligation. The former writes: *"Quem mortalia crimina post baptismum commissa premunt, hortor prius publica paenitentia satisfacere et ita sacerdotis iudicio reconciliatum communioni sociari . . . sed et secreta satisfactione solvi mortalia crimina non negamus, sed mutato prius saeculari habitu*

Council of Toledo (589), c. 11, expressly emphasized the retention of the ancient penitential discipline. (Bruns I, 215).

[62] *Serm.*, 351, IV, 9: *"Ut si peccatum eius non solum in gravi eius malo, sed etiam in tanto scandalo aliorum est atque hoc expedire utilitati Ecclesiae videtur antistiti, in notitia multorum, vel etiam totius plebis agere paenitentiam non recuset."* (Migne, *P.L.*, XXXIX, 1545). Concerning the authenticity of this sermon, cfr. P. Portalié, art. "Augustin" in the *Dict. de Théol.*, I (1902), 2310, who denies it, and Adam, *Kirchl. Sündenvergebung*, pp. 7 sqq., who defends it; likewise Batiffol, *Études d'Histoire*, 337–362.

et confesso religionis studio." [63] Gennadius, therefore, holds that as a substitute for public penance the penitent may embrace the religious life, but should manifest this by wearing a special garb.

Julian Pomerius, the teacher of Caesarius of Arles, in his *Vita Contemplativa* (II, 7, 3) teaches that the confession of secret grievous sins entails excommunication, and advises the faithful either to confess these sins voluntarily or to stay away from the altar and do penance in secret.[64]

Caesarius of Arles gives us a catalogue of the lesser offences as well as of the more grievous sins. For the latter he requires a public penance,[65] but adds in view of the Augustinian homily: "*Quia iustum est, ut qui cum multorum destructione se perdiderit, cum multorum aedificatione se redimat.*" [66] Here also, it seems, there is a restriction of public penance to transgressions which are a scandal to others. In another passage Caesarius still more

[63] *De Ecclesiasticis Dogmatibus,* cap. 23 (Migne, *P.L.,* XLII, 1217 ff.). Cfr. Watkins, II, 554 sqq. Cfr. also Faustus of Reji (492), *sermo 15* (*Corp. Scr. Lat.,* XXI, 281.)

[64] Migne, *P.L.,* LIX, 452 A-B.

[65] *Inter Sermones S. Augustini,* Sermo 104, 7: "*Pro capitalibus vero criminibus non hoc solum sufficit, sed addendae sunt lacrimae, rugitus et gemitus, continuata et longo tempore protracta ieiunia, largiores eleemosynae erogandae, ultro nos ipsos a communione Ecclesiae removentes, in luctu et tristitia multo tempore permanentes et paenitentiam etiam publice agentes.*" (Migne, *P.L.,* XXXIX, 1948).

[66] Migne, *l. c.*

plainly declares secret penance admissible in case of grievous transgressions, but praises the zeal of those who voluntarily assume public penance.[67]

That the old penitential discipline gradually declined, is evidenced by the above-mentioned tendencies in the Spanish and Gallic councils, notably in the Third Council of Toledo (589), which censured the abuse obtaining in many Spanish churches of making light of reconciliation. The *"forma canonum"* must be followed, the penitent be excluded for some time from holy Communion, he must frequently receive the imposition of hands with the rest, and, after the termination of his penance, may be readmitted to communion whenever the priest may think it proper.[68]

[67] *Sermo* 261, 1: *"Et ille quidem qui poenitentiam publice accepit, poterat eam secretius agere, sed credo considerans multitudinem peccatorum suorum videt se contra tam gravia mala solum non posse sufficere."* (Migne, *P.L.*, XXXIX, 2227). In my opinion these passages do not refer merely to private penance without any connection with ecclesiastical discipline, as Poschmann (*Kirchenbusse und Correptio Secreta*, pp. 66 sqq.) seems to think. Cfr. Tixeront, *Histoire des Dogmes*, III,[2] 397 sqq.

[68] C. 11: *"Quoniam comperimus per quasdam Hispaniarum ecclesias non secundum canonem, sed foedissime pro suis peccatis homines agere paenitentiam, ut quotiescumque peccare voluerint, toties a presbytero se reconciliari expostulent; ideo pro coercenda tam execrabili praesumptione id a sancto concilio iubetur, ut secundum formam canonicam antiquorum detur paenitentia, hoc est, ut prius eum quem sui paenitet facti a communione suspensum faciat inter reliquos paenitentes ad manus impositionem crebro recurrere, expleto autem satis-*

The Irish and Anglo-Saxon Churches were less rigorous. We know from the Irish penitentials,[69] and especially from the *Paenitentiale* of Archbishop Theodore of Canterbury (568), that public penance had never been introduced into those churches.[70] National customs and the character of the people may have been a reason for this.[71] When Theodore came to England, Irish missionaries had already introduced their penitential system,[72] so that Theodore, probably for practical reasons, in order not to render the conversion of the Anglo-Saxons more difficult, did not insist upon this humiliating penance.[73]

factionis tempore sicut sacerdotalis contemplatio probaverit eum communioni restituat." (Bruns, I, 215).

[69] Watkins, II, 603 sqq.; McNeill, *The Celtic Penitentials and their Influence on Continental Christianity* (Paris, 1923), pp. 94 sqq.

[70] I, 13, § 4: "*Reconciliatio ideo in hac provincia publica statuta non est, quia et publica paenitentia non est.*" H. Wasserschleben, *Die Bussordnungen der abendländischen Kirche* (Halle, 1851), 30. Cfr. H. J. Schmitz, *Bussbücher* (1883), 520; Watkins, II, 647 sqq. Regarding Theodore's *Poenitentiale* cfr. F. Liebermann (*Zeitschr. d. Sav.-Stift. für Rechtsgesch.*, Kan. Abt. [1922] 387–409).

[71] Cfr. McNeill, *loc. cit.*, 99 sqq.

[72] McNeill, *loc. cit.*, 98.

[73] Several writers have endeavored to demonstrate that public penance was practised also in the Irish and Anglo-Saxon Churches. Thus F. E. Warren, *Liturgy and Ritual of the Celtic Church* (Oxford, 1881), 148 sqq., and Pÿper, *Geschiedenis der Boete en Biecht*, II, 46, and latterly also Pollock Oakley, *English Penitential Discipline and Anglo-Saxon Law in their Joint Influence* (New York, 1923), 44 sq., 74–84. These endeavors are justified, in as much as *external* penances with

Whilst the Frankish Church showed symptoms of a disciplinary decline in the sixth and seventh centuries,[74] the Anglo-Saxon Church began to unfold a vigorous life. She sent her missionaries to the continent, and they not only carried the Gospel to the pagan Germans, but also contributed not a little to the strengthening of ecclesiastical discipline in the Frankish kingdom. Their activity quite naturally exerted some influence also on the penitential discipline of the continent.[75] What was more natural than that

exclusion from Holy Communion were occasionally imposed in the Irish and English Church. Thus we read in Vinnian's *Paenitentiale* (c. 11 & 12) that, besides a penance of six years, a suspension from office was imposed upon a cleric who for some time had secretly maintained illicit relations with a woman, whilst a penance of only three years was ordained for a single act of unchastity. Schmitz, *Bussbücher* (1883), 503. However, the liturgical precepts for the *Ordo Paenitentium,* as they were enforced on the continent in public penances, were not carried out here. The principle expressed by Vinnian in chap. 10: *"Dicimus enim in absconso absolvi esse peccata per paenitentiam et studium diligentius cordis et corporis"* (Schmitz, *loc. cit.,* 503; cfr. McNeill, *loc. cit.,* 95 sq.) was in force in the Irish and Anglo-Saxon Church. A. Koeniger in the *Histor. Jahrbuch der Görresgesellschaft,* XLV (1925), 567.

[74] Cfr. *Vita Columbani,* c. IV, ed. Krusch, *Mon. Germ., Script. Rer. Merov.,* IV (1902), 71; Watkins, II, 656 sqq.

[75] Cfr. Vacandard, *La Confession* (*Diction. de Théol.,* III, 875, 891). E. Loening, *Gesch. des deutschen Kirchenrechts,* II, 472, and P. Hinschius, *System des kath. Kirchenrechts,* IV, Berlin, 1866, 823 ff., derive the entire later penitential system of the Church from the monastic discipline of the Irish and the Anglo-Saxon monks. However, this is an unprovable exag-

those missionaries in the administration of penance should be guided by the same principles which they had learned at home? The introduction of the Anglo-Saxon penitential books on the continent at first caused a certain confusion in the penitential discipline. For while the authorities on the continent, following the canons, endeavored to uphold public penance, the new discipline knew none such, even in cases of public transgressions. This mitigation found acceptance in Franconia all the more readily because there the ancient rigor had already fallen into almost complete desuetude. Nevertheless, the new practice was viewed as a deviation from the ancient canons, which grew more serious as, in course of time, alongside of the accepted penitential statutes of a Theodore, Bede, and Egbert,[76] regulations of a

geration. Cfr. Schmitz, *Bussbücher* (1898), 4 ff.; E. Friedberg, *Lehrbuch des kath. und evang. Kirchenrechts* (Leipzig, 1903), 380. The same defects also mar McNeill's book, as the author seems not to be acquainted with the latest researches regarding secret confession during the early centuries, and even goes so far as to maintain that the public confession of sins was practised on the continent beyond the time of St. Augustine (87, 89).

[76] Cfr. Wasserschleben, *Bussordnungen,* 182 ff., 220 ff., 231 ff.; Schmitz, *Bussbücher* (1883) 510 ff., 550 ff., 565 ff. Concerning the penitentials of Beda and Egbert, cfr. Br. Albers in the *Archiv für kath. Kirchenrecht,* LXXXI (1901), 393–420; 1902, 163; concerning the *Poenitentiale Cummeani,* Jos. Zettinger, *Archiv* (1902), 501–540; and Hörmann, *"Bussbücher-Studien"* in the *Zeitschr. d. Sav.-Stift. f. Rechtsgesch.,* Kan. Abt., I–III (1911–1913).

doubtful character made their appearance and threatened to throw everything into confusion by their arbitrary dictates.[77] By these curcumstances the bishops and councils were forced to take a stand in regard to these innovations. Although they continued to inculcate the observance of the canons,[78] they nevertheless endeavored to accommodate themselves to the milder practice, which had already taken root, and therefore decided in favor of retaining public penance whenever there was question of a public transgression; but whenever the sin re-

[77] Thus the Third Synod of Tours (813) ordained *"ut iuxta modum peccati paenitentibus abstinentia indicatur; quoniam varie ab aliquibus sacerdotibus et indiscrete haec iudicia proferuntur. Ideo necssarium videbatur nobis, cum omnes episcopi ad sacrum palatium congregati fuerint, ab iis edoceri cuius antiquorum liber paenitentialis potissimum sit sequendus."* A. Werminghoff, *Concilia Aevi Carolini* (*Mon. Germ. Hist., LL.,* Sect. III, Tom. 2, 1 (1906), 289. Ebbo, Bishop of Reims, writes about 830 to Halitgar of Cambray: *". . . ita confusa sunt iudicia paenitentium in presbyterorum nostrorum opusculis atque ita diversa et inter se discrepantia et nullius auctoritate suffulta, ut vix propter dissonantiam possint discerni."* (*Mon. Germ. Hist., Epist.,* V, 617.) Cfr. also Rodulf of Bourges, *Capitulare* (Mansi, *Amplissima Collectio,* XIV, 958); McNeill, *The Celtic Penitentials,* 160 sqq.

[78] Thus the Council of Chalons (813), c. 38, decreed: *"Modus autem paenitentiae peccata sua confitentibus aut per antiquorum canonum institutionem aut per ecclesiasticam consuetudinem . . . imponi debet repudiatis ac penitus eliminatis libellis quos paenitentiales vocant, quorum sunt certi errores, incerti auctores."* (Werminghoff, *Concil.,* II, 1, 281.) Similarly the Council of Paris (829), I, c. 32 (Werminghoff, *Concilia,* II, 2, 633).

mained secret, it might be expiated in secret.[79]

The first notable witness for this distinction is Theodulph, bishop of Orleans (about 797). His two capitularies *"ad presbyteros parochiae suae"* are of a certain importance because, while Theodulph alludes in them to the ancient discipline, on the other hand he clearly sets up the principle of a secret penance for secret sins.[80] From other passages we see plainly that this was the general rule at the time of Theodulph. Thus in the case of murder he distinguishes whether this crime was committed publicly, or whether it remained secret, and accordingly imposes either a public or an occult penance.[81] For unnatural crimes such as bestiality and sodomy he re-inculcates the penal enactments of the 16th canon of Ancyra, but adds that this canon applies only to public penance. In the case of *secret* sin and secret confession only a *secret* penance need be performed. [82] A decade

[79] Cfr. Hinschius, *Kirchenrecht,* V, 92 ff.

[80] *Capitul.,* II: *"Capitalia et mortalia crimina publice deflenda sunt secundum canonum et sanctorum patrum institutionem. Sed et secreta satisfactione solvi mortalia crimina non negamus."* (Mansi, XIII, 1012). The passage is taken from the treatise *De Eccles. Dogmatibus* of Gennadius.

[81] *"Homicidium si quis voluntarie vel per insidias fecerit, iugi se paenitentiae submittat; et si hoc publice actum constat, si laicus, deponat arma . . . et publice satisfaciat."* (Mansi, *l. c.*)

[82] *"Quod supra diximus de his agatur, qui publice ad confessionem venerint et publice paenitentiam egerint. Quodsi occulte actum est et occulte ad sacerdotem venerint et puram*

later we find the distinction between secret and public sins clearly drawn at the councils of Chalons, after being crowned Roman emperor, labored zeal- Reims, and Arles. Charlemagne, who, especially ously for the re-establishment of ecclesiastical discipline, decreed at the Diet of Aix-la-Chapelle (813) that in the course of the same year synods were to be held at five different places, in which the reformation of ecclesiastical discipline should be the chief topic. The cities selected were Reims, Tours, Arles, Chalons, and Mayence. The decrees of these synods are almost identical in tenor. Three of the synods expressly define their attitude in regard to public penance. The Council of Chalons regrets that the canonical penance has fallen into desuetude in many places, and decrees in its 25th canon: "Whosover sins publicly, must do public penance, and must, according to the canons, be excommunicated and readmitted into the Church." [83] Similarly the Council of Reims says that a distinction is to be made between penitents who must submit to public, and those who must undergo private penance.[84] The Council of Arles formulates the same ordinance thus: "Those

confessionem fecerint, occulte paenitere secundum aetatis modum, quod superius continetur." (Mansi, XIII, 1014).

[83] Mansi, XIV, 98: A. Werminghoff, *Concilia* III, 278.

[84] C. 31: *"Ut discretio sit inter paenitentes qui publice et qui absconse paenitere debent."* Werminghoff, *l. c.*, 256.

found guilty of a public crime are to be publicly judged and must do penance according to the canons." [85] This formula was received literally into the Capitulary of 813.[86]

It seems, however, that these decrees were widely disregarded; for we soon meet with the same complaints about the neglect of public penance [87] and renewed conciliar decrees. Thus the Council of Mayence (847) reiterates the canons of Chalons and Reims, uniting both into one.[88] An ordinance reported by Benedict Levita regarding theft has a similar wording.[89]

Although the primary object of these councils was the maintenance of public penance, they never-

[85] C. 26: *"Ut qui publico crimine convicti sunt rei, publice iudicentur et publicam paenitentiam agant secundum canones."* Werminghoff, *l. c.*, 253.

[86] C. 25; A. Boretius, *Capitularia Reg. Franc.* (*Mon. Germ., LL.*, Sect. II, tom. 1 (1883), 175.

[87] Jonas, Bishop of Orleans (821–843), *De Institutione Laicali*, l. 1, c. 10: *"Perrari sunt hodie in ecclesia qui talem agant paenitentiam, qualem antiquorum Patrum paenitentium exempla et auctoritas canonica sancit."* (Migne, *P.L.*, CVI, 138 A).

[88] C. 31 (Mansi, XIV, 912). Cfr. Rodulf of Bourges, c. 34 (Mansi, XIV, 959).

[89] *Capitul.*, V, 116: *"Si vero occulte et sponte confessus fuerit, occulte fiat* [*sc. paenitentia*]. *Et si publice ac manifeste convictus aut confessus fuerit, publice ac manifeste fiat."* Pertz, *Mon. Germ., LL.*, II, 2 (1837) 51. Cfr. the collection of canons made by Isaac of Langres (+880), tit. VI, c. 2 (Migne, *P.L.*, CXXIV, 1076).

theless stress secret atonement for secret transgressions. This idea is expressed very clearly in a council of Mayence (852).[90] Hrabanus Maurus, under whose presidency two councils were held in 847 and 852, touches on the same subject in his *Institutiones Clericorum* (819). From him we learn the reason why secret penance only was to be imposed for secret transgressions; namely, in order that no scandal might be given to the weak when they saw the punishment of such sinners without knowing the cause.[91]

That the same distinction between public and secret sins was made in Italy, is evidenced by the Council of Pavia, held about 850. In its sixth canon the *"archipresbyteri"* are admonished to visit the individual families and see to it that those who

[90] C. 10: *"Si quis incestum occulte commiserit et sacerdoti occulte confessionem egerit, indicetur ei remedium canonicum, quod subire debuerat, si eius facinus publicum fuisset; verum quia latet commissum, detur ei a sacerdote consilium, ut saluti animae suae per occultam paenitentiam prospiciat."* Krause, *Capitularia,* II (1897), 189. Cfr. *Paenitentiale Rom.,* tit. III, 26; Burchard of Worms, *Decretum,* XIX, 36; Ivo of Chartres, *Decretum,* XV, 53.

[91] II, 30: *"Quorum peccata in publico sunt, in publico debet esse paenitentia. . . . Quorum ergo peccata occulta sunt et spontanea confessione soli tantummodo presbytero sive episcopo ab iis fuerint revelata, horum occulta debet esse paenitentia secundum iudicium presbyteri sive episcopi, cui confessi sunt; ne infirmi in ecclesia scandalizentur videntes eorum poenas, quorum penitus ignorant causas."* Ed. A. Knöpfler, (Monachii, 1900), 116 f.

sinned publicly should also do public penance, while that those who sinned in secret should confess their sins to the appointed priest.[92]

Certain passages treating of the penance of clerics deserve special mention here.[93] Theodulph of Orleans is of the opinion that a priest who accuses himself of secret adultery in confession may retain his office if he endeavors to expiate his transgression by works of penance.[94]

In the same sense Hrabanus Maurus demands that clerics be removed from office for public transgressions, whilst he permits them to remain in office for secret sins known only through confession.[95] He ap-

[92] C. 6; Boretius-Krause, *Capitularia,* II, 118.

[93] It seems as late as the ninth century removal or suspension from office was imposed, at least partly, for certain grievous transgressions of clerics, even when they were secret. Thus the *Poenitentiale S. Gallense Tripartitum* (which according to Schmitz belongs to the eighth century) enumerates a series of sins against chastity with the remark: *"si clericus deponatur et paenitentiam agat."* (Schmitz, 179 ff.). Similarly the *Poenitentiale Hubertense* (which according to Wasserschleben belongs to the seventh or eighth century, according to Schmitz to the first half of the ninth century) says (c. 62): *"Si quis diaconus vel sacerdos capitalia crimina commiserit, sive publicatus fuerit sive propria confessione sive manifeste sive in occulto gradu honoris privetur et inter audientes sit."* (Schmitz, *l. c.,* 338). Cfr. Kober, *Suspension* (1862), 8.

[94] *Capitul.,* II: *". . . si occultum est, poterit occulte in suo permanens gradu agere paenitentiam."* (Mansi, XIII, 1015). Cfr. Hinschius, *Kirchenrecht,* V, 100.

[95] *Paenitent.,* c. X: *"Clerici in sacris ordinibus, qui deprehensi vel capti fuerint publice in periurio, furto atque forni-*

peals, among other authorities, to a letter of Gregory I to Secundinus, in which the Pope grants to a fallen but penitent cleric not only pardon, but also reinstatement into office.[96] Since Gregory, however, on other occasions was equally firm in enforcing the rule that delinquent clerics must not be reinstated into office,[97] an effort was made to reconcile this apparent contradiction by applying the stricter view to public transgressions and the milder to secret sins. "As the utterances of the Gospel do not contradict one another," said Hincmar of Reims, "neither does the Apostolic See when it insists on removal from office according to the canons in case of public transgressions, although it in no way permits a condemnation or degradation without a public confession or regular conviction." [98]

Anselm of Canterbury towards the close of the eleventh century expresses himself still more plainly

catione et ceteris huiusmodi criminibus, secundum sacrorum canonum instituta a gradu proprio deponantur. . . . Qui autem de praedictis vitiis per occultam confessionem mala a se absconse commissa coram oculis Dei praesente etiam sacerdote . . . confitentur . . . , his etiam gradu servato spes veniae de misericordia Dei promittenda est." Schannat-Hartzheim, *Concilia Germaniae,* I (Colon., 1759), 196. Cfr. Hinschius, *op. cit.,* V, 102.

[96] Ewald-Hartmann, *Registr. Epist. Greg. I,* l. IX, *epist.* 147 (*Mon. Germ., Epist.,* II, 1 [1893], 142 f.) = Gratian, c. 16 D. 50.

[97] *Ibid.,* l. IV, *epist.* 26; l. V, *epist.* 5, 20, 43; l. VIII, *epist.* 24.

[98] *Capitula Synodica* (an. 852); Migne, *P.L.,* CXXV, 792 D.

on this point. Being asked for advice by a certain Abbot William, Anselm rejects the opinion that clerics may no longer exercise their office whenever they accuse themselves to the priest of secret grievous offences. However, he declares it to be very commendable if such clerics, out of humility, abstain from officiating, but the confessor must not compel them to do so against their will.[99] In regard to the divergent passages in Gregory I, St. Anselm says that to avoid a contradiction the passages forbidding the exercise of the ordo must be applied to public trangressions and those which permit continuation in office to secret offences. He gives as a reason for this leniency that the salutary road to penance must not be barred against those who would rather conceal their transgressions until death than expose themselves to the suspicion of a crime. In other words, St. Anselm insists on the necessity of keeping the sins confessed absolutely secret, if confession is to serve its purpose. Far from being guilty of sin, he says, the confessor who does not prohibit such a cleric from exercising his office, would sin grievously if he obliged him to relinquish his office, because by this procedure he would deter the penitent and many others from confession. Ivo of Chartres

[99] *Epist.* 56: *"De lapsis autem sacros ordines habentibus et spontanea humilitate secrete quibus debent confitentibus, nequaquam est asserendum, quod iisdem ordinibus amplius uti nullatenus possint."* (Migne, *P.L.*, CLVIII, 1125 ff.)

(1115) fully agrees with this view. The confessor, he says, may admonish the penitent to abstain from exercising his office and from receiving communion, but he cannot command him to do so.[100]

The effort to withdraw secret grievous sins from public penance was at bottom nothing else but a progressive and more precise delimitation of the silence demanded by sacramental confession. Public penance undoubtedly to a certain extent implied an exposure of the penitent. While in individual cases no inference could perhaps be drawn as to any particular sin, nevertheless the existence of grievous guilt could, as a rule, be surmised. This circumstance, especially the danger of a complete exposure of confession, must necessarily have deterred many; which explains why soon after St. Augustine some favored the more lenient course, though its general introduction was only brought about later by the Irish and Anglo-Saxon churches.

§ 3. POSITIVE TESTIMONY AND ORDINANCES REGARDING THE SEAL UP TO THE FOURTH LATERAN COUNCIL (1215)

Although we possess no direct evidence for the existence of the Seal of Confession (in the modern

[100] *Epist.* 186: *"De his qui criminalia peccata occulte confitentur . . . dicendum est iis non praecipiendo sed consulendo, ut seipsos ab officiis ecclesiasticis suspendant vel a sacramen-*

sense of the term) for the period extending from the fifth to the ninth century, there are, nevertheless, a few passages which point to the obligation of strict silence on the part of the confessor. Thus the Rule of St. Benedict imposes on the monks the obligation of confessing to the abbot or to the community the faults committed during work or otherwise. A secret sin should be revealed only to the abbot or to the spiritual director, who know how to heal their own wounds and do not reveal and publish those of others.[1]

In view of the custom prevalent in monasteries of manifesting the conscience to one's director for the purpose of spiritual guidance, it is doubtful whether St. Benedict here speaks of sacramental confession or merely of that extra-confessional manifestation of conscience. At any rate, the conclusion is justified that the secrecy of sacramental confession was insisted upon.[2]

Paulinus of Aquileia (802) expresses himself

torum communione abstineant." (Migne, *P.L.*, CLXII, 189 B C). On the effects of private penance in the case of clerics see Hinschius, *Kirchenrecht*, V, 102 sqq.

[1] *Reg.*, c. 46: ". . . *Si animae vero peccati latens causa fuerit, tantum abbati, aut spiritualibus senioribus patefaciat, qui sciant curare et sua et aliena vulnera, non detegere et publicare.*" (*Benedicti Regula Monachorum*, ed. Woelfflin (Lipsiae, 1895), 48. Cfr. ed. Butler (Friburgi, 1912), 82.

[2] Cfr. the article "Confession" by Vacandard in the *Dictionnaire de Théol. Cath.*, III, 875; O'Donnell, *Irish Theol. Quart.* (1910), 50.

more clearly on the above passage and evidently applies it to confession, which he recommends as a remedy for sins committed after Baptism, and then continues: "The priest, like an experienced and perfect physician, ought first to know how to heal his own sins, and then cleanse and heal the wounds of others *without manifesting them.*" [3]

A further allusion to the Seal occurs in the decrees of a Bavarian synod of the first half of the eighth century, where the faithful are exhorted to confess their sins for the reason that it is better to blush before *one* man in this life, than before the whole world at the judgment to come,[4]—a saying employed even at the present day. Alcuin (+ 804) em-

[3] *Liber Exhortationis ad Henricum Foroiuliensem,* c. 52: *"Ideo debemus nostras confessiones veraciter confiteri et fructus dignos paenitentiae facere; id est, ut praeterita non reiteremus secundum iussionem Domini et consilium sacerdotis Deum timentis. Qui sacerdos, ut sapiens et perfectus medicus, primum sciat curare peccata sua, et postea aliena vulnera detergere et sanare, et non publicare."* (Migne, *P.L.,* IC, 257 C sq.)

[4] C. 2: ". . . *Melius est enim hic in praesenti erubescere in conspectu unius hominis quam in futuro iudicio coram cunctis gentibus.*" A. Werminghoff, *Concilia Aevi Carolini,* II, 1 (1906), 52. Authorities do not agree as to the place and time of this synod. According to Pertz (*Mon. Germ., LL.,* III, 455) the ordinance quoted belongs to a Ratisbon synod, which (page 239) he places between 720 and 730. Werminghoff quotes it (*l. c.*) as an ordinance of a *Concilium Baiuvaricum* held between 740 and 750. With him sides Hauck, *Kirchengeschichte Deutschlands,* I [2], 492. For particulars regarding this question see *Neues Archiv für ältere deutsche Geschichtskunde,* XXIV (1899), 467 ff.

ploys almost the same words in a letter *"Ad fratres in Hibernia."* No one, he says, need blush in confessing his sins; for it is better to have *one* man as a witness of one's sins, which will redound to the benefit of the soul, than bear the accusation of the devil before the Great Judge.[5]

Finally, a capitulary of Charlemagne of the year 813 leaves no room for doubt that in the eighth and at the beginning of the ninth century the Seal was looked upon as a strict obligation of the confessor. A rumor had spread abroad that in Austrasia priests accepted bribes for betraying robbers known to them through confession. It seems that no positive evidence was adduced, as the capitulary merely orders the *"missi"* to investigate whether or not the rumor rested on facts.[6] The result of this investigation has not come down to us, nor have we any other information on the case. But we may gather from the passage quoted that in those days the direct violation of the Seal was looked upon as a crime.

[5] *Epist.*, 225: " . . . *Melius est habere unum hominem testem peccatorum suorum in salutem animae suae, quam spectare accusationem diabolicae fraudis ante iudicem omnium saeculorum* . . ." (Migne, *P.L.*, C, 502 D).

[6] *Capitula Originis Incertae*, c. 1: *"Ut hoc inquiratur, si de partibus Austriae verum est quod dicunt an non, quod presbyteri de confessionibus accepto pretio manifestent latrones."* (Boretius, *Capitularia Reg. Franc.*, I, 175). Cfr. A. Koeniger, *Die Sendgerichte in Deutschland*, I (*Veröffentlich. a. d. Kirchenhistorisch. Seminar München*, III. Reihe, 2. Heft, 1907), 31; O'Donnell, *Irish Theol. Quart.* (1910), 50.

It may be, however, that some entertained a more liberal view in regard to the use of the knowledge obtained through confession; in other words, the duty of silence imposed by sacramental confession was not as yet clearly defined in respect of matter and form. This seems to be indicated by a passage in the Rule of Chrodegang (about 760), which says (c. 14): The bishop should duly punish a cleric who would dare to conceal certain sins from him, in order to confess them to another priest, fearing lest the bishop should suspend him from, or not admit him to, office, or exclude him from holy Communion, or punish him in some other way.[7] This passage suggests the inference that the bishop could make use of the matter heard in confession outside the sacred tribunal,—a view which we shall frequently meet with in the later Middle Ages. A capitulary of Charlemagne of the year 777 expresses itself in this sense. To accustom the Saxons more readily to voluntary confession of their sins, the monarch decreed: If anyone has secretly committed certain crimes subject to capital punishment, but confesses them volun-

[7] *Reg. Chrodeg.*, c. 14; F. Walter, *Fontes Iuris Ecclesiastici Antiqui et Hodierni* (1862), 29. We need not presume with Hinschius (*Kirchenrecht*, IV, 126[7]) a direct violation of the Seal, because it is expressly stated, *"si episcopus hoc per quodlibet ingenium investigare potuerit."* The bishop could know in various ways whether a *canonicus* confessed to another, and if this happened, might easily suspect that there must be some special guilt involved.

tarily to the priest and accepts the penance, he shall, on the testimony of the priest, be exempt from capital punishment in the event of a trial.[8]

As a general rule, however, the clergy adhered to the principle laid down by Jonas, Bishop of Orleans (+843): *"Confitentes secreta confessione sacerdotibus peccata sua et ea dignae paenitentiae satisfactione delentes, nequaquam sunt prodendi."* [9]

This did not mean, however, that every communication of confessed sins was prohibited, but only such as implied a manifestation or exposure of the penitent. As a matter of fact, the confessor in difficult cases needs the advice of others and is, therefore, sometimes obliged to communicate to others what he has heard in confession. The above-mentioned synod of Pavia (850) directs for such cases that the archpriest should consult the bishop. If the bishop does not care to decide the case alone, he

[8] *Capitula de Partibus Saxoniae,* c. 14: ". . . *Si vero pro his mortalibus criminibus latenter commissis aliquis sponte ad sacerdotem confugerit et confessione data agere paenitentiam voluerit, testimonio sacerdotis de morte excusetur."* (Boretius, *Capitularia Reg. Franc.,* I [1883], 69). The exact year of this ordinance is not known, but it certainly belongs to the period between 775 and 790. Cfr. Boretius, *l. c.* Honoré (*Le Secret de la Confession,* p. 33), draws from this passage the conclusion that in some places the Seal of Confession had fallen into disuse. This is a gross exaggeration. The Capitulary of Charlemagne of 813 rather proves the contrary.

[9] *De Institutione Laicali,* l. I, c. 18 (Migne, *P.L.,* CVI, 156 C).

shall consult two or three other bishops; an extraordinarily difficult case should be laid before the provincial synod, publicly, if the person and crime are known; in case, however, of a secret confession, the kind and quality of the transgression may be discussed and a salutary means of amendment decided upon, provided *the name of the delinquent is not mentioned.*[10]

A valuable testimony for the Seal of Confession is furnished by the great Bishop Hincmar of Reims (845–882). In order to procure a divorce from his lawful but childless consort, Thietberga, King Lothaire II (+ 869) had induced her to declare in the presence of several bishops and abbots at a synod (860) that she was unworthy to continue in wedlock with the king, for reasons which she had secretly confessed to Archbishop Gunther of Cologne and which she authorized him to communicate to the synod. This was done, and the bishops declared that the queen, on account of her admitted crime, must not continue to live in wedlock with the king, but must go to a convent and do canonical penance. In the same year [11] the queen repeated her self-accusa-

[10] C. 6: ". . . *si autem occulta confessio est, et is a quo quaeritur salutis consilium explicare non sufficit, potest suppresso facinorosi nomine qualitas quantitasque peccati discuti et congruus correctioni modus inveniri.*" (Pertz, *Mon. Germ., LL.*, I, 401; Boretius-Krause, *Capitularia*, II, 1, 118).

[11] According to Krause (*Capitularia Reg. Franc.*, II (1893), 463 ff.) these synods took place in January and February, 860.

tion orally before a second synod and, on demand, repeated it in writing, and thereupon, in compliance with her wish, was sentenced to canonical penance in a convent. Against this proceeding Hincmar of Reims entered an energetic protest.[12] Referring to the Council of Carthage (419), he declared it altogether inadmissible to reveal the matter of a secret confession. Even in case the confession had been made in the presence of several bishops, it must be kept as secret as if it had been made to one alone, for this reason: *"quia Spiritus Sancti oraculo cautum esse dignoscitur, ut quique peccantes peccatorum suorum latentes causas spiritualibus senioribus patefaciant, qui sciant et sua et aliena vulnera curare et non detegere ac publicare."* [13] As everyone knows from experience, he says, nobody would confess his sins to his prelate, if he had to fear that he would be exposed in public.[14] Nor is the case altered by the fact that Thietberga made a written confession, since this runs counter to ecclesiastical usage, for Leo I

[12] His opinion is deposited in the treatise *"De Divortio Lotharii Regis et Thietbergae Reginae* (Migne, *P.L.*, CXXV, 623–772). Cfr. Sdralek, *Hinkmars von Reims kanonisches Gutachten über die Ehescheidung des Königs Lothar II* (Freiburg, 1881); H. Schrörs, *Hinkmar, Erzbischof von Reims, sein Leben und seine Schriften* (Freiburg, 1884).

[13] Migne, *l. c.*, 634 B.

[14] *"Et notum de seipso unicuique constat, quia nemo est qui praelato suo peccata sua prodere non erubescat, si se denudari et publicari putaverit."* (Migne, *l. c.*, 635 B).

had expressly forbidden [15] to exact a written confession of secret sins and then condemn the penitent to public penance.

Over against the self-accusation of the queen seemingly stood the fact that several years before on the same charge her representative had remained unhurt in an ordeal, and thus the innocence of the queen had been demonstrated. This was explained by saying that the queen had confessed her sins previously, as was confirmed by the testimony of her confessor.[16] To this contention Hincmar answered that he would hardly believe such testimony if it had not been reported to him by trustworthy men. For, he argues, if the confessor knew of the guilt of the queen, and concealed it on account of the secret confession, how could he propose an ordeal, as it is said he did, or even give his consent to such a test? Does not such conduct mean sharing in the sin of another and tempting God? [17] If, on the other hand, he be-

[15] *Epist.*, 168, c. 2.

[16] Cfr. *Interrogatio VI* and *VII* (Migne, *l. c.*, 659 B, 674 C); Sdralek, *l. c.*, 55 ff.

[17] *"Et si scivit, et propter secretam confessionem reticuit, quare, quod absit, sicut dicitur, ut iudicium inde fieret obtinuit, vel consensit, non reverens sententiam legis pariter et Evangelii: Non tentabis Dominum Deum tuum."* (Migne, *l. c.*, 674 D). It seems, Hincmar here imposes on the confessor the duty of preventing the ordeal, in case he knows of the guilt of the accused through secret confession. A direct violation of the Seal need not on that account be necessarily presumed. Cfr. Sdralek, *l. c.*, 57.

lieved it his duty at the time to avoid the greater of the two dangers, namely, the violation of the Seal, what induces him now to reveal the confession? [18]

Aside from the question whether the queen spoke the truth in her self-accusation, or merely, under duress, confessed crimes she had not committed, extrinsically her confession bore the character of a sacramental confession and was evidently considered such by those concerned. This applies above all to the confession made by her to Bishop Gunther. But also the confession she repeated before several other bishops seems to be placed by Hincmar on a par with sacramental confession, because it was made with the express intention of atoning for her alleged crime by accepting the canonical penance. It is true, the bishops emphasized the fact that both Gunther as well as they revealed the queen's confession only by her order and with her express permission.[19] However, Hincmar seemingly does not admit the validity of such a permission to the detriment of the penitent, at least not in the case in question, because he believes it to have been obtained under duress.[20] Finally, Hincmar speaks very generally of the strict

[18] Migne, *l. c.*, 675 A.

[19] ". . . *iuxta condicionem datae licentiae.*" (Migne, *l. c.*, 632 A).

[20] "*Pessimum enim est de suspicione aut extorta confessione quemquam iudicare.*" (Migne, *l. c.*, 682 D); Sdralek, *l. c.*, 60.

obligation of the Seal and in several passages presupposes it as well known.[21]

The duty of the confessor is by no means limited to not revealing in express words the sins confessed by the penitent. The Seal may also be violated by *signs* and *actions,* from which others may obtain a knowledge of the matter confessed. Therefore a council held at Douci (France) in 874 decreed: *"Omnes tam clerici quam laici vel feminae confitentes secreta confessione sacerdotibus peccata sua et ea dignae paenitentiae satisfactione deflentes nequaquam sunt prodendi et peccata eorum nulli a sacerdote quacumque significatione manifestanda, nisi soli Domino in secreta oratione, pro quibus et pro suis iugiter intercedat peccatis."* [22]

[21] Cfr. Lenglet du Fresnoy, *Traité Historique et Dogmatique du Secret Inviolable de la Confession* (Lille, 1708), 42 ff. (Migne, *l. c.,* 682 B D, 739 B).

[22] C. 8 (Mansi, XVII, 296). Cfr. Hinschius, *Kirchenrecht,* IV, 126. The first part of the ordinance reminds us of the *"Institutio Laicalis"* of Bishop Jonas of Orleans, c. 18; the second recalls a passage in the *"Concordia Regularum"* of Benedict of Aniane (+821), where we read (cap. XV, § 11): *"Abbas vel praepositus vel quilibet seniorum fratrum, cui ab abbate commissum fuerit, ut confessiones recipiat, crimina maiora vel minora nullatenus manifestet nisi soli iusto iudici, qui omnium confitentium crimina lavat."* (Migne, *P.L.,* CIII, 854 B). This passage, which Benedict of Aniane took from an older, seventh-century commentary on the Rule of St. Benedict, shows us how the 46th Chapter of that Rule was understood and interpreted at that time. Cfr. *Commentar. in Regul. S. Bened.* (Migne, *P.L.,* LXVI, 694).

In conformity with this strict prohibition we meet at the close of the ninth century with the first *direct penal legislation* of the Western Church against the violation of the Seal. In the *Poenitentiale Summorum Pontificum,* preserved in the monastery of Monte Cassino and edited by H. J. Schmitz,[23] canon 105 reads as follows: *"Si quis sacerdos palam fecerit et secretum penitentie usurpaverit et quavis*[24] *homo intellexerit et declaratum fuerit quem*[25] *celare debuerit, ab omni honore suo in cunctum populum deponatur et diebus vite sue peregrinando finiat."*[26] A double punishment is here inflicted on the priest who violates the Seal: removal from office and life-long exile. He is condemned to expiate his transgression as a pilgrim far from home. The severity of

[23] *Bussbücher* (1883), 388 ff.

[24] Schmitz, *Bussbücher,* 428, has *"quaevis."*

[25] Schmitz, *l. c.,* has *"quod . . . debuerat."*

[26] *Codex Cassin., 372,* p. 45. Dom Bruno Albers had the kindness to send me the exact text of the manuscript.—Though this *Penitential* contains many ordinances of Frankish origin (see P. Fournier, *Études sur les Pénitentiels* in *La Revue d'Histoire et de Litt. Relig.,* VII, Paris, 1902, 120 ff.) canon 105 seems to be of Italian provenance, for it cannot be found in any penitential of the Anglo-Saxon-Frankish group, nor in the collections of Regino of Prüm (+915) and Burchard of Worms (+1025). As to date, Fournier places our Penitential at the close of the ninth or the beginning of the tenth century, while Schmitz (*l. c.,* 393) believed it to date from 700–750. The former view is decidedly to be preferred, since, according to Fournier, some of the ordinances of Frankish origin do not date back beyond the ninth century.

this punishment shows with what rigor the secrecy of confession was safeguarded.

In the same sense speak two *Ordines ad dandam paenitentiam,* which Schmitz has published from the Codex Cassinensis No. 451 and the Cod. Valicell. C. 36. The first of these manuscripts belongs to the period of Otto III (983–1002), whilst the *ordo* contained therein goes back at least to the ninth century.[27] The confessor is admonished, when imposing a penance, to make a distinction in regard to age, position, and state of life, and at the same time is warned to be careful not to reveal the sins of the penitent by imposing a definite fast.[28] A similar direction is contained in the *Ordo* of the *Codex Valicellanus,* which lays down the rule that the confessor should so arrange the penance as not to reveal the sins of the penitent.[29]

The collection of Regino of Prüm *De Ecclesiasticis Disciplinis* (about 906) and Burchard of Worms' *Decretum* (about 1012–1022), both of which originated in Germany, offer no new momenta for the development of the Seal, but confine themselves to repeating the ordinances which emphasize the distinction between the penance for public and

[27] Cfr. Schmitz, *Bussbücher* (1883), 87; Kösters, *Studien zu Mabillons Römischen Ordines* (Diss., Münster, 1925), 25.

[28] *"Attende etiam, ut tale iciunium imponas, ne peccatum facias manifestum."* (Schmitz, *l. c.,* 750).

[29] *". . . sic dividat ei paenitentiam, ne peccatum manifestum faciat."* (Schmitz, *l. c.,* 758).

for secret sins.[30] Besides, the *Decretum* of Burchard contains the fifth canon of the Sixth Council of Carthage (419), which the author evidently applies to confession; he modifies, however, the concluding sentence so as to permit the bishop to refuse holy communion secretly to an impenitent sinner,[31]—a question which we shall encounter frequently later on. Burchard furthermore embodied in his *Decretum* the letter of Leo I to the bishops of Campania, Samnium, and Picenum, but, as appears from the heading, has in view secret confession rather than the Seal.[32]

[30] Regino, *De Eccles. Discipl.*, I, c. 139 = *Epist. Innocent. I ad Exsuper. Episc.*; c. 289 = *Conc. Carth. III* (397), c. 32; c. 292 = *Conc. Mogunt.* (852), c. 31; Burchard, *Decret.* XIX, c. 36 = *Conc. Mogunt.* (852), c. 10; c. 43 = *Epist. Gregorii I ad Secundinum.* Cfr. also XIX, c. 28, 37, 40; IX, 77.

[31] XIX, c. 127: ". . . *secrete tamen ei interdicat communionem, donec obtemperet.*" (Migne, *P.L.*, CXL, 1008 C).

[32] *Epist.*, 168, c. 2 = Burchard, *Decret.*, IX, c. 159: "*de paenitentia fidelium, ut confessio eorum non publice fiat, sed privatim.*" (Migne, *l. c.*, 1014 B). It is therefore a mistake when Wasserschleben (*Bussordnungen*, 678) and, copying him, Lea (*A History of Auricular Confession*, I, 418) and Watkins, II, 736, ascribe to Burchard an ordinance on the Seal, made up from Anselm of Lucca (XI, 23) and the *Poenitentiale Cassinense* (c. 105). This ordinance cannot be found in the original *Corrector. Burchardi*, as contained as the 19th book of the Decree in the Freiburg manuscript (between 1034–1043) or in the prints of Cologne (1548) and in Migne (*P.L.*, CXL), but occurs in a later adaptation, which the Cod. Valicellanus (F 8) contains. This adaptation, a manuscript belonging to the 14th century, contains in 273 numbers, besides the text of Burchard,

Direct testimony in favor of the Seal is not lacking in the eleventh century in the country north of the Alps. Thus we find among the decrees of a General Synod of Rouen, held in 1074, this ordinance: "No priest or monk shall admit a public grievous sinner to penance without an order from the bishop. If the sinner has transgressed in secret, he [the priest or monk] may hear his confession, but must impose only the penance ordained by the bishop, *in such manner, however, that, in accordance with the law of secrecy of confession, the person of the transgressor be not exposed.*" [33]

many extraneous pieces, among them our canon. In Italy it was evidently noticed that Burchard gave no clear directions concerning the Seal, therefore these were supplied from the *Poenitentiale Summorum Pontificum* and from Anselm of Lucca. In the index of chapters of the Cod. Valicellanus (F 8), which precedes the collection, we find under no. 244 the following heading: *Iudicium apostolicum.* The canon itself exhibits some deviations from the text given by Wasserschleben and reads: *"Caveat ante omnia sacerdos, ne de his qui ei confituntur [!] peccata sua alicui recitet, quod ei confessus est, non propinquis, non extraneis, nec, quod absit, pro aliquo scandalo; nam si hoc fecerit, deponatur et omnibus diebus vite sue peregrinando peniteat. Si quis sacerdos palam fecerit et secretum penitentie usurpaverit, ut peccatum* [Wasserschleben: *populum*] *intellexerit et declaratum fuerit, quae* [Wasserschl.: *quod*] *celare debuerat, ab omni honore suo in cunctum populum deponatur et diebus vite sue peregrinando finiat."*

[33] C. 8: *"Ne quis presbyter vel monachus publice peccantem criminali peccato ad paenitentiam nisi iubente episcopo suscipiat. Occulte peccantem confitentem quidem suscipiat, sed paenitentiam non nisi eam, quam episcopus determinaverit, iniungat. Sic tamen, ut iure confessionis secreto peccantis per-*

The matter in question was an especially grievous transgression (*criminale peccatum*). If it was committed publicly, the bishop alone, or a priest specially deputed by him, has the right to hear the confession and impose the penance. In case, however, the sin remains concealed, any ordinary priest may receive the confession, but he must let the bishop determine the penance.[34] The original position of the bishop in the penitential discipline of the Church is here preserved, in as much as it is left to him to determine the measure of the atonement, although the atonement needed no longer to be performed publicly in the case of secret sins. The confessor had to inform the bishop of the sins confessed, but at the same time take care that no one could recognize the identity of the penitent, because the latter had the right that his confession be kept secret.

The latter ordinance, however, seems not to have

sona nulli detegatur." (Mansi, XX, 400). It is not quite certain whether our canon belongs to the Council of Rouen; for it is one of eight canons, which are joined to the decrees of the council in an old manuscript without title or specification as to their origin. Possibly these canons belong to a later council, though their tenor seems to indicate the eleventh century. Cfr. Mansi, *l. c.;* Harduin, VI, 1520 D; Hinschius, *Kirchenrecht,* IV, 127.

[34] One might also understand it this way, that the confessor, when imposing a penance, should follow the penitential book approved by the bishop. However, in that case it would be unintelligible why the confessor is cautioned to be careful "*ne persona peccantis*" and not rather "*peccatum confessum detegatur.*"

been always strictly carried out. Archbishop Lanfranc of Canterbury (1070–1089) is a classical witness for the ideas prevalent in the middle of the eleventh century regarding the Seal.[35] He writes in his treatise *De Celanda Confessione*: "He sins against this sacrament [*i. e.,* Penance] who in any manner whatever arouses public suspicion regarding what has been confessed to him, or causes penitents to be defamed." [36] Lanfranc, therefore, takes exception not only to the direct violation of the Seal, but also to everything that may arouse suspicion. Furthermore, the confessor is not only bound to strict silence regarding the sins which were the object of confession, but also regarding any sins of a third person which the penitent, with or without his fault, may have revealed in confession. Lanfranc treats this as self-evident. "Whosoever defames another in confession," he says, "injures only himself, because the identity of him whom he defames is not made public, nor can any suspicion be cast upon him without violating the Sacrament of Penance." [37] Referring to Exodus XXI, 29, he im-

[35] Migne, *P.L.,* CL, 625 ff. Cfr. Lenglet du Fresnoy, 25.

[36] *"In his sacramentis qui quocumque modo de confessis sibi aliquam suspicionem in publicum oriri scienter faciunt vel confessos infamant, caligant."* (Migne, *l. c.,* 627 B).

[37] *"Derogans enim in confessione solum sibi nocet, quia is, cui derogatur, nec publicatur nec in quamcumque suspicionem quocumque modo adduci salvis sacramentis potest confessionis."* (Migne, *l. c.,* 627 D).

poses on the confessor the duty of observing silence in regard to the sins of a third person. He who accuses others in confession, he says, is like an unmanageable ox; if his master [*i. e.,* the confessor] does not lock him up, *i. e.,* whenever he in any way publicly manifests the sins confessed or the identity of a penitent, he should die; because he who reveals a confession commits a crime deserving of death.[38]

The betrayal of confession, Lanfranc continues, in a certain sense runs counter to the very nature of the sacrament. For as Penance is a second Baptism, in which all sins are washed away, the confessor, after giving absolution, must consider sin as no longer present.[39] However, this argument holds only in the case of a good confession. Therefore Lanfranc defines the duty of silence on the part of the confessor more precisely. Even if the penitent should persevere in his guilt, and be an object of reprobation, he says, the confessor should bear with

[38] *"In Vetere Testamento bos cornupeta recludi praecipitur; si enim non reclusus in campo publicationis aliquem occiderit, i. e. in suspicionem mortalis criminis adduxerit, dominus eius, is videlicet, cui per confessionem se credidit, quia non eum reclusit, aliquod videlicet in confessione dictum peccatum, vel quemquam simpliciter a derogante nominatum in causam publicam quocumque modo adducit, morte mori praecipitur. Revelator enim confessionis mortalis criminis reus est."* (Migne, *l. c.,* 628 A).

[39] *"Sacramenta confessionis violat, quia nec paenitentem in confessione baptizatum credit; ipsumque secundum baptismum, id est confessionem, quantum in ipso est, destruit."* (Migne, *l. c.,* 628 B).

him, after the example of Christ, who bore with Judas to the end. Nor should he ever punish those whose transgressions have been made known to him by his penitents, either maliciously or as a result of simple-mindedness, in order that he may not violate the Sacrament of Penance.[40] Nay, the learned bishop goes still farther. He warns priests and prelates to take special care not to punish publicly, under one pretense or another, the transgressions revealed to them secretly in confession.[41]

This clear testimony regarding the obligation and extent of the Seal of Confession coincides so accurately with our modern view that one is surprised to find such ideas expressed in the eleventh century. In some points Lanfranc seems to have been ahead of his time, as he decides questions which became the subject of controversy later on. There is, however, no reason to assume that Lanfranc set up new theories or expressed merely his private opinion. His words, though not a law of the Church, embody a statement of the practice existing in England; they

[40] "*Si vero is, qui culpa perseverat, et etiam anathema est, is cui confessus est, cum Domino usque ad exitum Iudam patiatur; nec etiam in illos aliquando per se vel per aliquem vindictam exerceat, qui sibi denuntiati sunt in crimine vel per confitentium malitiam vel simplicitatem, ne sacramenta confessionis violentur.*" (Migne, *l. c.*, 628 D ff.)

[41] "*Sciendum vero minoribus summopere est sacerdotibus et maxime praelatis, ne culpam dictam in occulto sub nomine alterius culpae vindicent in publico.*" (Migne, *l. c.*, 630 D.).

are merely a more precise expression of what had been inculcated two centuries before by the Council of Douci.

On the other hand it is also true that, as has been intimated, various abuses caused Lanfranc to write his treatise *De Celanda Confessione.* This may be gathered from its entire contents, and especially from the thorough discussion of the question to whom confession should be made in case one's pastor violated the Seal. The answer to this question, broached so far as we know, for the first time by Lanfranc, seems really to have been the main purpose of the treatise.

Somewhat later Peter Abélard (1079–1142) [42] writes in his *Ethica:* "As there are many inexperienced physicians, to whom it is dangerous, or at least useless, to entrust sick persons, so there are also among the ministers of God's Church many who have neither the fear of God nor prudence, who *easily reveal the sins of their penitents,* so that it appears not only useless, but pernicious, to confess to them. . . . Because, as I have said, they easily reveal the confessions they hear, they provoke the penitent; instead of healing sins,

[42] Cfr. Hayd, *Abälard und seine Lehre* (Regensburg, 1863); Dahmen, *Darstellung der Abälardischen Ethik* (Münster, 1906); Schmoll, *Die Busslehre der Frühscholastik* (München, 1909), 28 ff.; G. Robert, *Les Écoles et l'Enseignement de la Théologie pendant la première moitié du XII^e siècle* (Paris, 1909), 211.

they inflict fresh wounds and deter from confession those who hear of it. . . . By revealing sins out of revenge or levity, they at times give grave scandal and expose their penitents to great peril. Hence praise rather than blame is to be bestowed on those who, in order to escape these drawbacks, avoid their pastors and choose a zealous spiritual physician." [43] In another passage Abélard represents the tempter as suggesting to a sinful person: "The priests are light-minded and careless, and it is difficult for them to control their tongue. If you confess to them this or that, it will not remain secret; but if it is made public, danger threatens you, or your reputation will be impaired, you will suffer damage and you will be put to shame on account of your evil conduct." [44]

In the *Epitome Theologiae Christianae,*[45] which was most probably compiled by one of Abélard's pupils on the basis of his *Theologia,* the penitent is permitted to conceal certain sins in confession if he is convinced that the priest will not keep them secret.

Since the eleventh century the opinion frequently

[43] *Ethica seu Scito te ipsum,* c. 25 (Migne, *P.L.,* CLXXVIII, 669 ff.).

[44] *Hom. II in Ramis Palmarum, Sermo* VIII; Migne, *l. c.,* 441 D.

[45] Migne, *l. c.,* 1757 C. Concerning the genesis of the *Epitome,* cfr. H. Denifle in the *Archiv für Literatur und Kirchengeschichte des Mittelalters,* I (1885), 584 ff. See also Pijper, *Geschiedenis der Boete en Biecht,* II, 118, 123, 129; Schmoll, *l. c.,* 33.

recurs that it is not obligatory to confess to one's own priest if he cannot observe silence, but reveals the sins of his penitents. Thus in the treatise *De Poenitentia* of an anonymous writer at the close of the 12th century [46] and in the *Poenitentiale* of Alanus of Lille (+ 1203).[47]

In most of these cases there was probably question of an indirect violation of the Seal, in as much as some priests made extra-sacramental use of the knowledge obtained and thus became the occasion of a betrayal of confession.[48] Peter of Blois (+ about

[46] "*Est adhuc quod confessionem tuam liberam facit, si videlicet sacerdos plenus rimarum est, h. e. si continere et tacere non potest qui confitentium peccata aliis prodit. Hunc quasi grandam pestem fuge.*" (Migne, *P.L.*, CCXIII, 870 D).

[47] "*Cautum quoque sit apud peccatorem, ne peccata sua revelet sacerdoti, cuius notorium est crimen confitentium sibi peccata revelare.*" (Migne, *P.L.*, CCX, 304 B.)

[48] An apparent direct violation of the seal is reported by Roderic, Bishop of Toledo (1208–1247), in his *Chronica Hispaniae*. He relates that the two sons of Sancho the Great, of Navarra (970–1035), Garsius and Ferdinand, out of revenge accused their mother of adultery. The king's council agreed upon a duel, which, in the form of an ordeal, was to decide the guilt or innocence of the queen. While preparations were made for the contest, there appeared upon the scene a saintly monk (*monachus sanctitate praecipuus ex monasterio Anagorensi*), to whom the two calumniators had admitted their deed (*filii autem confessi fuerant sancto viro se in matrem suam falso infamiam congessisse*), and who acquainted the king with the true facts, after having secured immunity for the culprits; whereupon the queen was acquitted.—A strange feature of this account is that Roderic, who had attended the Fourth Lateran Council, and hence was thoroughly acquainted with the strict

1200) deplores this fact. In his book, *De Paenitentia vel Satisfactione a Sacerdote Iniungenda,* he thus reproves a certain abbot: "The excessive rigor which you exhibit in confession towards the brethren, as all complain, is a source of great scandal. For, after hearing their confession, you publicly show contempt for those whom you have admitted to the salutary remedy of penance. Though you may not expose their shortcomings directly in words, you nevertheless injure their good repute by arousing suspicion in others by your manifest and open contempt." [49]

Abuses of this kind are quite intelligible when we bear in mind the deplorable ecclesiastical conditions

obligation of the Seal, has no word of censure for the monk, but describes him as a saintly man. It is, therefore, quite possible that the confession made by the boys was *not sacramental,* or that the culprits had permitted their confessor to speak. However, it may also be that the monk considered himself justified in making use of his sacramental knowledge in order to prevent a great calamity, in so far as this could be done without injuring the guilty. In this case we would have here the first practical exemplification of the principle subsequently advocated by many canonists: *"Confessarius potest dicere talibus, qui paenitenti possunt prodesse, non obesse."* Cfr. Hincmar's allusion, *supra* p. 84, n. 17. The complete account may be found in *Hipania Illustrata,* tom. II (Francofurti, 1603), 93, 94. Nicolaus Antonius in his *Bibl. Hisp. Vet.,* II, l. 8, c. 2, n. 47, characterizes the historian as *"gravissimum ante alios atque integrum rerum hispanicarum usque ad aetatem suam scriptorem"* (cfr. Hurter, *Nomenclator,* II, 3rd ed., 282), so that there is no reason to doubt the facts.

[49] Migne, *P.L.,* CCVII, 1091 ff.

of the tenth and eleventh centuries, the defective training and worldliness of so many members of the clergy,[50] and when we reflect that the duty of silence on the part of the confessor had not as yet been uniformly regulated in its various details by ecclesiastical legislation.

However, as there were not wanting men who labored strenuously for the improvement of ecclesiastical discipline, so there were those who insisted on keeping the Seal of Confession intact. Special mention must here be made of an ordinance in the *Collectio* of Anselm of Lucca (+ 1086), which, by being received into the Decree of Gratian, became a classical passage in favor of the Seal. Anselm introduces this ordinance in the eleventh book of his *Collectio* as canon 23, with the heading: *"Ut sacerdos, si confessionem paenitentis manifestaverit, deponatur,"* and continues: *"Gregorius papa,"* and now follows the canon: *"Caveat ante omnia sacerdos, ne de his, qui peccata sua confitentur, alicui recitet quod ea confessus est, non propinquis, non extraneis, nec, quod absit, pro aliquo scandalo. Nam si hoc*

[50] Cfr. A. Knöpfler, *Kirchengeschichte* [4] (1906), 321 ff.; Petrus Damiani, *Opuscula,* XVII ff. (Migne, *P. L.,* CXLV, 380 ff.); Ratherius of Verona, *De Contemptu Canonum* (Migne, *P. L.,* CXXXVI, 486 ff.); Grupp, *Kulturgeschichte des Mittelalters,* II [2] (Paderborn, 1908), 292–311; Dresdner, *Kultur- und Sittengeschichte der italienischen Geistlichkeit im 10. und 11. Jahrhundert,* Breslau, 1890.

fecerit, deponatur et omnibus diebus vite sue ignominiosus peregrinando pergat." [51]

The closing sentence of this canon coincides with the ordinance of the *Poenitentiale Summorum Pontificum* mentioned before. However, there are two new points which merit special consideration. In the first place, it is enjoined on the confessor not to reveal either to friends or to others the sins confessed to him. We shall see later that even eminent canonists defended the opinion that a priest might in certain cases communicate confessed sins to persons kindly disposed towards the penitent. The canon furthermore says: "*neque pro aliquo scandalo*," *i. e.*, "*vitando.*" [52] This clearly decides a question which occupied canonists throughout the Middle Ages until modern times, namely, whether it would be allowed to violate the Seal of Confession in order to prevent a great calamity to the State or to the common weal.[53] Cardinal Gregory received this canon into

[51] I owe the exact text of this passage to the kindness of Professor Friedr. Thaner in Graz, who is engaged in editing the *Collectio Anselmi.* In Migne, *P.L.*, CXLIX, 525, the numbering is: cc. 24, 25.

[52] Cfr. St. Bonaventure, *Comment. in Sent.*, IV, d. 21, art. 2 qu. 1, concl. (ed. Quaracchi, *Opera Omnia,* tom. IV [1889], 566).

[53] As the above-quoted canon was received into the collection of Cardinal Gregory (before 1120) and thence passed into the *Decretum* of Gratian, the commentators and editors of the latter have taken great pains to ascertain its origin. In recent editions of the *Decretum* by Richter (1839) and E.

the collection which he compiled under the title *Polycarpus* before 1120.[54]

The two compilations of Ivo of Chartres (1115), known as *Decretum* and *Panormia,*[55] contain no

Friedberg (Leipzig, 1879, p. 1244) it is simply marked as *"caput incertum."* John Turrecremata (*Gratiani Decretorum Libri V,* Romae, 1727, 319) points to Anselm of Lucca, but beyond that he does not go. Because the canon in Anselm's and Cardinal Gregory's collection bore the heading *"Gregorius papa,"* it was ascribed to Pope Gregory I by the older canonists and theologians; but against this ascription stands the fact that neither this nor any similar canon can be found in the works of Gregory I. Cfr. also Tixeront, *La Doctrine Pénitentielle de S. Grégoire le Grand* (*Mélanges de Patrologie et d'Histoire des Dogmes,* Paris, 1921), 237–260. Morinus ascribes the canon to Gregory VII; Gründler, in his article *"Das Beichtsiegel"* in the *Archiv für Kirchenrechtswissenschaft,* IV (1833), 59, is of the opinion that the canon is composed of several contemporary synodal decrees; Berardi (*Gratiani Canones Genuini,* P. II, tom. II, Venetiis, 1777, 145) intimates the same; according to him the canon was ascribed to Gregory VII probably because the Council of Rouen (1074) took place during the reign of this Pope. The circumstance that Anselm of Lucca, in whose works the canon is met with for the first time, admits that he gathered his materials, at least in part, from Roman archives, would also indicate a Roman origin.

[54] VI, 20, 9. This collection has never been printed, but the variants of our canon are given in Friedberg, *Decret. Gratiani,* 1244[83]. Cfr. R. v. Scherer, *Handbuch des Kirchenrechts,* I (Graz, 1885), 240.

[55] The *Decretum* is in 17 parts and the *Panormia,* which is based upon it, has 8 books. Both are reprinted in Migne, *P.L.,* CLXI, 47 ff. The *Panormia* was completed about 1095. Cfr. R. v. Scherer, *l. c.,* I, 241; P. Fournier, *Les Collections Canoniques Attribuées à Yves de Chartres* (*Bibl. de l'École de Chartes,* LVII [1896], 645 ff.); *idem, "Yves de Chartres et le*

express regulations regarding the Seal of Confession, unless we regard as such the letter of Leo I [56] and the fifth canon of the Sixth Council of Carthage.[57] Ivo, however, in one of his letters, touches upon our subject,[58] when he connects the above-mentioned canon of Carthage with the doctrine of the Seal. The occasion of this letter was the following. Somebody had set fire to the house of his neighbor. Having in vain exhorted the unknown incendiary to indemnify the injured, the pastor excommunicated the offender without knowing who he was. Later the culprit admitted his guilt in confession, but refused to make restitution. The priest now asks Ivo how he should act towards the excommunicated man in case he persists in attending divine services. Citing the Councils of Carthage (419) and Vaison (442),[59] Ivo decides in favor of keeping the Seal. "We must not," he says, "separate exteriorly from our communion a sinner who secretly confesses his transgression; but neither must we interiorly approve his offence. In this manner we shall do justice to both ordinances,—to the one by which we are forbidden to have dealings with an excommunicated person, and to the

Droit Canonique" in *La Revue des Quest. Hist.*, LXIII (1898), 51 ff.

[56] *Decret.*, XV, c. 167 (Migne, CLXI, 894 B).

[57] *Decret.*, V, c. 363 (Migne, *l. c.*, 433 A).

[58] *Epist.*, 156 (Migne, CLXII, 162 A–B).

[59] By mistake Ivo cites the Council of Agde (506) in place of Vaison (Migne, *l. c.*).

other which prohibits the revelation of sins confessed."[60]

About 1140[61] Gratian wrote his celebrated *Concordia Discordantium Canonum,* which is not only a collection, but also a re-arrangement of the laws at his disposal. Gratian devotes to the penitential discipline a special treatise, which, though it does not contain any new regulations regarding the Seal, is of importance for the subject here under discussion. The high esteem in which the *Decretum* was held and its rapid dissemination contributed not a little to place the strict obligation of the Seal beyond all doubt. The afore-mentioned *Canon Gregorii,* which Gratian took from Anselm of Lucca (c. 2, D. VI *de Paenit.*), is the classical passage to which all later canonists and theologians appeal.[62] The vari-

[60] *"Peccantem peccata sua secrete confitentem non debemus a nostra communione corporaliter separare nec contactu cordis eius pravitati communicare. 'Hoc tenore utramque sententiam servabimus, et illam, qua praecipimur excommunicatis non communicare, et illam, qua iubemur confitentium crimina non propalare."* (Migne, *l. c.*).

[61] On the genesis of the *Decretum Gratiani* see the latest researches of Gaudenzi, *L'Età di Decreto di Graziano e l'Antichissimo Ms. Cassinese di esso,* Bologna, 1907. Concerning Ernst von Łwiefalten and Gratian's treatise *De Poenitentia* see Ghellinck, *Le Mouvement Théologique du XII^e Siècle* (Paris, 1914) 348.

[62] I pass over the other passages frequently quoted from Gratian in favor of the Seal, because their relation to the Seal is not quite certain (c. 1, C. II, q. 1 = August., *Sermo* 351, n. 10; c. 3, C. VI, q. 2 = *Conc. Carth. VI* [419], c. 5), or at

ous *Summae* which take the *Decretum* of Gratian for their guidance—Huguccio's excepted—offer but little material for the elucidation of the Seal, because they either take no notice of the treatise on penance,[63] or else treat it very meagerly.[64] Several of them, however, when explaining Cap. 2, 3, C. VI, q. 2, touch also upon the Seal of Confession. *Rufinus* declares in his *Summa* (1157–59) that the priest who reveals the sins confessed to him commits a mortal sin.[65] Similarly *Stephen of Tournay* (1160–70), in expounding the same passage, emphasizes

least offer no new points for its development (c. 7, C. III, q. 7; c. 67, D. II *de Consecr.;* c. 89, D. I *de Paen.* = *Epist. Leonis I,* 168, 2.

[63] Thus the *Summa Magistri Rolandi* (Alex. III., +1181), ed. Fr. Thaner, Innsbruck, 1874; the *Summa* of Simon of Bisiniano (about 1179), and the *Summa* of Sicardus (+1215).

[64] Thus Paucapalea, *Summa,* ed. v. Schulte, Giessen, 1890; Omnibonus (1185), *Abbreviatio Decreti;* Rufinus, *Summa Decretorum,* ed. H. Singer, Paderborn, 1902; Stephen of Tournay (+1203), *Summa,* ed. v. Schulte, Giessen, 1891; John Faventinus (+1190), *Summa super Decretum.* Cfr. Fr. v. Schulte, *Die Geschichte der Quellen und Literatur des kanonischen Rechts von Gratian bis auf die Gegenwart,* I Stuttgart, 1875), 109 ff.; H. Singer in the introduction to his edition of the *Summa Rufini,* Paderborn, 1902.

[65] *"Aliud est determinate dicere crimen, quod sacerdoti aliquis confitetur; aliud dicere quia aliquis est crimen confessus, sed non exprimere, quod crimen confessus fuerit. Primum grande peccatum est, de quo agitur in [tractatu de] poenitentia; secundum non est adeo grave de quo hic agitur."* (Ed. Singer, p. 283 sq.)

that a bishop, on account of the knowledge obtained in confession, could not cite a guilty person into court, though he can do so if he has other outside evidence, though even in this case he can use only the extra-sacramental information. Moreover, he says, the bishop is not allowed to slight the offender in public intercourse, because the sin has not been communicated to him in his capacity as man, but as minister of God.[66] Of the same opinion are *John of Faenza* (after 1171) [67] and *Simon of Bisiniano* (about 1179).[68] *Huguccio* (+ 1210) is more pro-

[66] *"Videtur quod possit episcopus accusare eum, qui crimen suum confessus est ei, si tamen habeat probationes. Et hoc est verum, si confessus est ut homini, non ut deo; vel etiam si ut deo crimen suum confessus episcopo perduraverit in crimine suo et episcopus postea possit habere testes, non tamen ex prima confessione, quam ex sequenti criminis repetitione bene poterit eum accusare. Ab isto autem, de quo hic dicitur, non debet abstinere, quin ei communicet publice, privatim autem non . . . quia non ut homini, sed ut deo revelatum est peccatum, cuius vicarius est sacerdos."* (Cod. lat. Bamberg. Patr. 18 [B III, 21] f. 193 [1] c. 2.) For this passage, which is not contained in Schulte's edition, I am indebted to Prof. Gillmann in the *Archiv für kath. Kirchenrecht,* XCIII (1913), 448 [2].

[67] *"Potest dici tamen quia si aliquis manifestavit crimen suum episcopo tamquam deo et perduraverit in crimine suo et episcopus postea poterit habere testes, non tamen ex prima confessione quam ex sequenti criminis repetitione poterit eum accusare."* (Cod. lat. Bamberg., Can. 37 [P. II, 27] f. 45 [1] c. 1.) Cfr. *Archiv, loc. cit.*

[68] *"Ipse episcopus crimen quod solus novit, probare per testes non potest, nihil proferat, i. e. ad accusationem non prosiliat,*

lix in regard to this question. In his celebrated *Summa* on the *Decretum* (about 1188) [69] he comments on cap. 7, C. III, qu. 7 as follows: The priest must not divulge the sins of others. He is not allowed to reveal the sins confided to him in confession. If he does so, he must be deposed and wander about as a pilgrim as long as he lives, as it is said in the treatise *De Poenit., dist. VI, Cap. Sacerdos.* This punishment, however, he goes on to say, applies only to him who says: This was communicated to me in confession, or if he is silent as to the source of his knowledge, but after confession divulges what he knows only through sacramental confession, be it in court or elsewhere, in the presence of many or only of a few. If, however, he has knowledge of the transgression also from sources outside of confession, and can prove this by witnesses, he may bring action in court.[70] Similarly Huguccio comments on cap. 3, C. VI, qu. 2: Even if this passage be understood as referring to a sacramental confession, there is no contradiction between the milder penalty here

quia tunc esset proditor criminis, non correptor. . . . Punire eum non potest, quia non ut iudex sed ut Deus novit." (Cod. Bamb., Can. 38 [D II, 20] f. 18, c. 2). Cfr. *Archiv,* XCII (1912), 772.

[69] Huguccio was professor in Bologna from 1178–90, then bishop of Ferrara. Concerning his *Summa* on the Decree of Gratian, cfr. Gillmann in the *Archiv für k. Kirchenrecht,* XCIV (1914), 233 sqq.

[70] The passage is taken from Cod. Vat. 2280 f. 136, c. 1, published by Gillmann, *Archiv,* XCII (1912), 773.

threatened and the degradation demanded in *Cap. Sacerdos,* because the two penalties supplement each other and are applied also in various other transgressions. The removal from office for violating the Seal of Confession, the temporary excommunication for the refusal of the bishop, because of sacramental knowledge, to have anything further to do with the penitent.

But how, queries Huguccio, shall the priest act towards an impenitent sinner if he knows of his crime only through sacramental confession? In case his admonitions are of no avail, may he denounce the culprit to the proper court if others know of the crime and can testify to it? Huguccio thinks he may, but in any case he must conceal the fact that the culprit confessed to him; because a denunciation does not presume a knowledge of the crime; this is demanded only of the witnesses.[71]

A decretal of Pope Eugene III (1145–1153) bears on the same subject.[72] It treats of a clerical judge who has positive knowledge of a crime through confession. The culprit denies his guilt in open court and refuses to make amends.[73] Can the

[71] Cfr. Gillmann, *loc. cit.,* 774. For further remarks on the use of the knowledge obtained in confession *apud* Huguccio see *infra,* p. 130 sq.

[72] Jaffé-Löwenfeld, *Regesta Pontif. Rom.*[2] (1888), 13,772, ascribes this decretal to Alexander III (1159–1181). Cfr. also E. Friedberg, *Corpus Iur. Can.,* II, 186, note.

[73] C. 2, X (I, 31): *"Si sacerdos sciat pro certo, aliquem esse*

judge, relying on his sacramental knowledge, charge him with the crime? By no means. As long as the defendent is not legally convicted, the judge can do no more than exhort the guilty person, whoever he may be, to repentance. In case the injured party insists on restitution, the judge may, notwithstanding his knowledge is derived from confession, excommunicate the guilty party, but without mentioning his name. The excommunication itself must be of a general tenor.[74] For, although he knows the culprit, he has gained this knowledge not as judge, but as a representative of God. These last words clearly prove that the phrase *"vel ei confessus fuerit"* are to be understood of sacramental confession,[75] not,

reum alicuis criminis, vel ei confessus fuerit, et emendare noluerit, nisi iudiciario ordine quis probare possit, non debet eum arguere nominatim, sed indeterminate, sicut dixit Christus: 'Unus vestrum me traditurus est.' Sed si ille, cui damnum illatum est, petierit iustitiam, potest excommunicare auctorem damni, licet etiam ei confessus sit. Sed tamen non nominatim potest eum removere a communione, licet sciat eum esse reum, quia non ut iudex scit, sed ut Deus. Sed debet eum admonere, ne se ingerat, quia nec Christus Iudam a communione removit." (Friedberg, II, 186 f.).

[74] To this the *Glossa Ordinaria* of Bernard of Parma (+ 1263) adds the remark: *"Proprio nomine expresso non debet eum arguere vel excommunicare, sed in genere sic dicendo: quicumque fecit tale factum, sit excommunicatus, et perinde habetur ac si proprio nomine expresso esset excommunicatus quantum ad Deum, sed quantum ad ecclesiam non, quia non vitabitur ab ecclesia."* (Ed. Paris, 1547, fol. 119^{v} b).

[75] Cfr. the Gloss: *"Licet enim confessus sit in paenitentia, numquam tamen excommunicabit eum ipsum exprimendo, quia*

e. g., of a private admission. Otherwise we should be forced to assume that a judge possesses every knowledge which he obtains by private communication, as representative of God. The ordinance of Pope Eugene undoubtedly harks back to the fifth canon of the Council of Carthage (419). But whilst a sacramental confession cannot be with certainty deduced from this canon, the words of Pope Eugene presuppose it beyond all doubt. By its reception into the Decretals of Gregory IX the ordinance received permanent binding force.[76]

With the development of papal legislation during the reigns of Alexander III and Innocent III, Canon Law began to flourish. The reform measures of the great Innocent aroused the liveliest interest everywhere. Synods were held for the advancement of Christian life. The Seal of Confession quite naturally received its share of attention. Thus a synod held in 1197 at Dioclea in Dalmatia, under the presidency of two delegates of Innocent III, decreed that no priest should dare to reveal knowledge received in sacramental confession; if convicted of this offence, he shall be forever deprived both of his office and of his ecclesiastical benefice.[77]

sic proderet peccatorem, quod esse non debet." Cfr. on this the article, "*Über die Unverletzlichkeit des Beichtsiegels*" by Gründler, in Weiss' *Archiv der kirchlichen Rechtswissenschaft*, IV (1833), 87 ff.

[76] C. 2, X (I, 31).

[77] C. IV: "*Districtius inhibemus, ne aliquis sacerdos filii sui*

To the same period belong the splendid diocesan statutes of Bishop Odo of Paris (1197–1208), which became the model for many other dioceses. In the sixth chapter we read concerning the Seal: "Neither on account of the hatred or anger of any person, nor out of fear of death, shall a priest dare to reveal the confession either by a sign or by a word, in general or specifically, by saying, *e. g.:* I know what kind of a man you are. If he reveals the confession, he shall be degraded without mercy." [78] —As to the object of the Seal it is furthermore ordained that whenever a penitent mentions the name of an accomplice in confession, the confessor must reprimand him and observe strict silence in regard to the information obtained as well as the sins of the penitent.[79]

We meet with similar testimonies in the works of the theologians of the 12th and 13th centuries in which the beginnings of the controversies about the use of the knowledge obtained in confession, of which we shall speak later, may be clearly traced.

vel filiae spiritalis privatam confessionem alicui revelare praesumat. Quodsi facere convictus fuerit, officio et beneficio ecclesiastico perpetuo spolietur." (Mansi, XXII, 702).

[78] N. 15: "*Nullius ira, vel odio, vel etiam metu mortis in aliquo audeat* [*sacerdos*] *revelare confessionem signo vel verbo ullis, generaliter vel specialiter, ut dicendo: Ego scio quales estis. Et si revelaverit, absque misericordia debet degradari.*" (Mansi, XXII, 679).

[79] N. 14: ". . . *arguat eum confessor et secretum illud teneat, sicut confitentis peccatum.*" (Mansi, *l. c.*)

Thus *Nicholas of Clairvaux,* a contemporary and companion of St. Bernard (+ 1153), admonished priests never to speak to anyone about what they had heard under the Seal, nor to join in talk about such matters. The confessor should furthermore take care not to lose his esteem for the one who lays bare his misery to him; nor should he be suspicious and judge the future conduct of the penitent by the past. Should it perchance occur that matter heard in confession come before him in his capacity of judge, he should let the legal proceedings take their course, just as if he knew nothing, and not be guided by his sacramental knowledge.[80] In another place he enumerates among the duties of a confessor that he must observe perpetual silence regarding his penitent.[81] Similarly *Robert Pulleyn* (+ about

[80] *Sermo II de Beato Andrea: "Videat sacerdos ne umquam de his, quae sub signaculo confessionis accepit, aliquam faciat mentionem vel alicui loquenti consentiat. Caveat etiam, ne vilescat in conspectu eius, qui ei suam vilitatem ostendit, nec sit suspectus, nec de praeterita futuram vitam aestimet peccatoris. Quodsi fortuito de his quae in confessione suscepit causa coram eo fuerit ventilata, non tamquam conscius in partem declinet, sed quasi nescius iudiciarium ordinem permittat excurrere."* (Migne, *P.L.,* CXLIV, 833). Formerly this homily was falsely ascribed to Peter Damian (cfr. Migne, *l. c.,* 11 f.).

[81] *Sermo in Dedicatione Ecclesiae: "Ille vero cui confitetur, poenitentiam dignam, orationem continuam, taciturnitatem perpetuam confitenti suo curet administrare."* (Migne, *P.L.,* CXLIV, 901 B). L. Honoré, in *Le Secret,* p. 39, falsely ascribes this passage to St. Peter Damian.

1150) [82] writes: Because you confess to the priest as if he were God, he keeps your sins as secret as if they had been revealed to God and not to him. Therefore, continues Robert, the priest is not permitted to exclude publicly from holy communion those who are known to him through confession as malefactors or implicated in an offence, but unknown as such to others, even though they be impenitent. He must act as if not he, but God alone knew this.[83] *Peter Lombard* merely copied the above-quoted canon (c. 2, D. VI *de Paenit.*) from Gratian into his Book of Sentences,[84] and *Magister Gandulphus*

[82] The *VIII Libri Sententiarum* were written about 1140. Cfr. Müller, *Umschwung in der Lehre der Busse während des 12. Jahrhunderts* (*Theol. Abhandlungen, Weizsäcker gewidmet* (Freiburg, 1892), 310). Cfr. also Schmoll, *l. c.*, 60 ff.

[83] *Sententiae,* l. VI, c. 51: *"Quoniam quasi Deo ita confiteris presbytero, ideo occulta tua ita celet, quasi non sibi sed Deo soli detecta fuissent. Unde cuiuslibet flagitii malefactores malefactique conscios tam sibi per confessionem notos quam aliis incognitos quasi solus Deus cor illorum pravum atque impaenitens sciret ipseque nesciret, ita publicis conventibus ad altaris refectionem eucharistiaeque participationem accedentes simul cum aliis recipit."* (Migne, CLXXXVI, 898 B). Cfr. Caesar of Heisterbach, *Homiliae,* IV, 10: *"Qui sacerdoti confitetur, cum Deo loquitur; unde sacerdoti, ac si non audierit confitentis verba, prodere non licet."* (Ed. Coloniae, 1615, 84); A. Koeniger, *Die Beicht nach Caesarius von Heisterbach* (*Veröffentlichungen aus dem Kirchenhistorischen Seminar München, II. Reihe,* 10. Heft; 1906.

[84] *Sent.,* IV, d. 21, c. 9 (*Opp. S. Bonav.,* Quaracchi, IV [1889] 545). On the dependence of the Lombard on Gratian consult P. Fournier, *"Deux Controverses sur les Origines du*

(1160–1170) in his commentary on the Sentences [85] adds the following remark: The priest is therefore not obliged to make known such a crime to the bishop, even if the latter commands the denunciation under pain of excommunication.[86] According to *Peter Cantor* (1197) the confessor should induce the penitent to make a sincere confession by promising him to keep his sins as secret as his own.[87] In another passage he exhorts the confessor to be kind and gentle to the penitent and say to him: "You confess only to God, whose representative I am, and I must not reveal either by word, or by looks,

Décret de Gratien" in the *Revue d'Hist. et de Litt. Rel.*, V (Paris, 1898), 98 ff.; Baltzer, *Die Sentenzen des P. Lombardus, ihre Quellen und ihre dogmengeschichtliche Bedeutung*, Leipzig, 1902 (*Studien zur Gesch. der Theol. u. Kirche*, VIII, 3). J. de Ghellinck, *Le Mouvement Théol. du XII^e Siècle*, pp. 126–177.

[85] Cfr. John de Walter, *Magistri Gandulphi Bononiensis Sententiarum Libri quatuor*, Vindobonae, 1924. In the introduction (XL ff.) this writer shows that Gandulphus followed Peter Lombard; cfr. also Ghellinck, *Le Mouvement Théol. du XII^e Siècle*, pp. 179–244.

[86] *Sent.* l. IV, § 186, ed. Walter, p. 490. This is evidently the meaning of the words: *"Non ergo tenetur sacerdos tale crimen revelare episcopo sub poena excommunicationis,"* to which must be added: *"id praecipienti."*

[87] *Verbum Abbreviatum*, c. 144: *"Confessor ad se accedenti, ut confiteatur, dicat: Fili, non mihi, sed Deo scito te confiteri; me tamen in testem tuae confessionis vocans peccata tua facis mea, quae et tecum portare meque pro iis satisfacere et ut iam tecta et velut propria celare promitto."* (Migne, *P.L.*, CCV, 344 B).

or by signs, what has been confessed to me.[88]

Peter of Blois (1200) addresses to the above-mentioned abbot the following words on account of an indirect violation of the Seal: You know what a severe penalty the priest incurs who reveals the sins confessed to him. It matters little whether the secret sins of others are exposed by word or sign, by a certain contempt, or by an excessively severe penance.[89]

Alanus of Lille (1203) in his *Poenitentiale* insists that the confessor must not refuse Communion to an impenitent sinner of whose condition he knows only through confession.[90]

Robert of Flamesbury (about 1210), whose *Poenitentiale* became the pattern of later penitential *summae,* expresses himself in a similar manner. He exhorts the confessor never to impose a public penance for a secret sin, because by doing so he would divulge the sin of the penitent, an exceedingly reprehensible action.[91]

[88] *Verb. Abbr.,* c. 65 (Migne, *loc. cit.,* 199 A).

[89] *De Paenitentia vel Satisfactione a Sacerdote Iniungenda: "Novisti, quam gravi animadversione plectatur transgressio sacerdotis peccata sibi confitentium revelantis. Nec multum interest, utrum voce vel signo vel quodam vultuoso contemptu aut alias nimia severitate satisfactionis secreta conscientiae alienae vulgentur."* (Migne, *P.L.,* CCVII, 1091 f.).

[90] Concerning this writer cfr. Grabmann, *Die Geschichte der Scholast. Methode,* II, 452 ff.; Nic. Paulus, *Geschichte des Ablasses,* I, 222.

[91] L. IV, cap. ult.: *"Tu autem numquam pro occulto peccato*

The 21st canon of the Lateran Council (1215) is therefore merely a summary of what individual bishops or synods had emphasized and inculcated since the ninth century, and contains no essential innovation either concerning the Seal or the precept of annual confession. What had been in vogue for centuries was here inculcated anew, on account of the abuses which had crept in, and sanctioned in legal form for the entire Church.

§ 4. THE FOURTH LATERAN COUNCIL (1215) AND THE DECRETAL "DILECTUS FILIUS" OF HONORIUS III—A COMMENTARY OF ST. ANTHONY OF PADUA

Having made annual confession obligatory on all the faithful, the Lateran Council, 1215, in its canon *"Omnis utriusque sexus,"* admonishes the confessor to treat his penitents with leniency and prudence as a true physician of the soul. Concerning the Seal it says: *"Caveat autem omnino* [*sacerdos*], *ne verbo aut signo aut alio quovis modo aliquatenus prodat peccatorem. Sed, si prudentiore consilio indiguerit,*

publicam vel sollemnem dabis penitentiam; alioquin per penitentie sollemnitatem publicabis peccatum penitentis, quod pessimum est." (*Cod. lat. Monast.*, 269, fol. 29 a). Cfr. v. Schulte, *Geschichte der Quellen*, I, 235; Joh. Dietterle, *"Die Summae Confessorum,"* in the *Zeitschrift für Kirchengeschichte*, XXIV (1903), 363 ff.

illud absque ulla expressione personae caute requirat, quoniam, qui peccatum in paenitentiali iudicio sibi detectum praesumpserit revelare, non solum a sacerdotali officio deponendum decernimus, verum etiam ad agendam perpetuam paenitentiam in arctum monasterium detrudendum." [1]

In this ordinance three parts can be plainly distinguished. The first contains a strict command to the confessor (*caveat omnino*) not to betray the sinner (*ne peccatorem prodat*) in the least (*aliquatenus*) in whatever manner, either by word or sign or in any other way (*verbo aut signo aut alio quovis modo*). The words "*peccatorem prodat*" indicate, as we remarked above when speaking of the synod of Pavia (850), that the prohibition of telling the sins confessed is not as such the purpose of the Seal, but the confessed sins of a *definite* penitent. In conformity with the purpose of the Seal, the words "*Qui peccatum in paenitentiali iudicio sibi detectum praesumpserit revelare,*" must be construed in this sense. The purpose of the Seal is defined more precisely by designating the "*paenitentiale iudicium*" as the basis of the obligation. That purpose is none other than the safeguarding of the Sacrament of Penance; hence there is an obligation only when the Sacrament is actually in question.

The Council speaks of the priest as the minister of the Sacrament, hence, according to the word-

[1] C. 12, X (V, 38), ed. Friedberg, II, 887 f.

ing, the obligation of the Seal rests solely on him. Whether and to what extent other persons, who may in some manner share in the knowledge obtained in confession, are obliged to observe the sacramental silence, our canon does not state. The opinions of canonists and theologians on this point will be treated later.

The second part defines the action of the confessor in doubtful cases. When he himself is not able to come to a correct decision, he is told to ask the advice of some one more experienced than himself. For this purpose he may (at least ordinarily) make known the confessed sin together with its essential circumstances, but in so doing, must in no wise indicate the person of the penitent (*"absque ulla expressione personae"*). The matter must be handled so cautiously that he who is consulted does not recognize the penitent.

The third part of canon XII contains the penalty for violating the Seal. It is of a twofold nature: loss of the priestly office, and relegation of the culprit to a strict monastery for the purpose of doing a life-long penance.

This ordinance of the Fourth Lateran Council passed into the compilation known as *"Compilatio Quarta,"* [2] which originated not long after the death of Innocent (1215 or 1216) and was regarded as

[2] C. 2, V, 14: *Quinque Compilationes Antiquae*, ed. Friedberg, Lipsiae, 1882.

an official collection by Benedict XIV.[3] From this compilation Raymond of Peñaforte took the canon into the Decretals.[4]

That this ordinance of the Fourth Lateran Council fully harmonizes with the personal views of Innocent III, is proved by the words of that Pope: *"Caveat sacerdos, cui confitetur peccator, non ut homini, sed ut Deo, ne forte post confessionem auditam recordetur peccati, hoc est, ne verbo vel signo innuat se scire delictum. . . . Gravius enim peccat sacerdos qui peccatum revelat, quam homo qui peccatum committit."* [5]

In spite of these definite precepts, however, *Caesarius of Heisterbach* reports various abuses in connection with the Seal of Confession.[6] Thus he tells of a priest who attempted to seduce a woman peni-

[3] *Bullar. Bened. XIV,* ed. Luxemb., tom. X (1752), p. iii. Cfr. Laurin, *Introductio in Corpus Iuris Canonici* (1889), 122; Wernz, *Jus Decretalium,* I (Romae, 1898), 321. According to Sägmüller (*Lehrb. des kath. Kirchenrechts* [2] [1909], the *compilatio quarta* did not originate until about 1220.

[4] C. 12, X (V, 38).

[5] *Sermo I De Consecratione Pontificis* (Migne, *P.L.,* CCXVII, 652 D). The assertion that the Fourth Lateran Council formulated the duty of the Seal into a law in opposition to the views of Innocent III is totally unfounded. A story told by Caesarius of Heisterbach, to which we shall recur later, is cited as authority for this contention. Cfr. Gründler in Weiss' *Archiv,* IV, 56–57.

[6] Cfr. Koeniger, *Die Beichte nach Caesar von Heisterbach,* 63 ff.

tent by threatening to reveal her confession if she would not consent to his advances. The woman denounced him, and he was banished from the province.[7] In another case Caesarius seems not to have discovered a violation of the Seal, since he approves rather than blames the act of the confessor. A man confessed to the dean of Bonn that he had been seduced to adultery by the wife of a friend, mentioning the name of the guilty woman. When during Lent this woman came to confession, but concealed the above-mentioned sin, the dean exhorted her to pray that she might confess all her sins, and dismissed her without absolution. He repeated this admonition on the following day, when she again concealed the sin. The woman became suspicious, consulted with a priest who was related to her, and threatened to report the case to the bishop. The dean took her aside and calmly told her: Then and there you committed adultery with such and such a man,—whereupon the woman confessed her sin and received a penance.[8] A dying monk confessed to his abbot that he had committed sin with a young man attached to the monastery, without mentioning his name. The abbot commanded all to receive com-

[7] *Dialog.*, III, c. 42, ed. Coloniae, 1851, p. 162.

[8] *Dialog.*, III, c. 31, ed. Col., 147 ff. It seems that the penitent in this case had named his accomplice in order that the confessor might exert an influence on her.

munion at the high altar on the following day and by this means discovered the accomplice, who did not dare to come to the altar railing.[9]

These examples may contribute towards understanding the Decretal of Honorius III which was received into the *Corpus Iuris Canonici* under the title *"De Excessibus Praelatorum."* A certain presbyter by name of John was suspected of having knowledge of a theft which had shortly before been committed in Rome. The *Rectores Fraternitatis Urbis* (according to Joannes Andreae [10] an association of twelve or fourteen priests who had jurisdiction over the Roman clergy) demanded of the said priest, under threat of the interdict, that he should either tell them the names of the thieves, or himself make restitution. The presbyter appealed to Honorius III, who happened to be in Rieti at the time. The Pope addressed the following letter to his delegate in

[9] *Dialog.*, III, c. 24, ed. Col., 139. Similar indirect violations of the Seal are made the subject of complaint in a memorial prepared by a friar minor at Arles for the Second Council of Lyons (1273). He says: *"Impingitur iis* [*sc. Cisterciensibus et Grisiis*] *de sigillo confessionis, quod non bene custoditur ab iis, quoniam ex condicione superiorum certas imponunt pro certis criminibus paenitentias confessores, et cum eas faciunt peccatores, superioribus, ut dicitur, reatus apparet."* Döllinger, *Beiträge zur politisch-kirchl. und Kulturgeschichte der sechs letzten Jahrhunderte,* III (Vienna, 1882), 194.

[10] *Novella in Decretales Gregorii IX c. dilectus: "Isti consueverunt esse 12 vel 14 et regere clerum urbis et in eum iurisdictionem habent."* (Venetiis, 1489, *sine pag.*). Cfr. P. F. Kehr, *Regesta Pontif. Roman.,* I (Berolini, 1906), 8 ff.

Rome, Peter Saxo, Cardinal of the titular church of St. Pudentiana:[11] *"Dilectus filius Iohannes, sancti Thomae de Parione presbyter, exposuit coram nobis conquerendo, quod rectores fraternitatis Urbis ipsum ad revelandum fures, et id quod super quodam furto sibi tamquam sacerdoti fuerat revelatum, vel ad satisfaciendum exinde damnum passo arctare nitentes, in eum, nisi alterum praemissorum intra octo dies efficeret, tulerunt sententiam interdicti. Quia igitur perniciosum esset, praedictum presbyterum sibi taliter credita revelare, ac iterum iniquum, cogi ad id quod non rapuit exsolvendum, discretioni tuae per apostolica scripta mandamus, quatenus praefatos rectores coram te conveniens iniungas iisdem, ut a memorati presbyteri super hoc gravamine penitus conquiescant."*[12] What occasioned this Decretal is not quite clear, as we do not know how the said presbyter incurred the suspicion that rested upon him. According to Johannes Andreae the stolen object was a batch of books, and he conjectures that one of the thieves repented, confessed his crime to

[11] Cfr. Giaconius, *Vitae et Res Gestae Pontificum Romanorum et S.R.E. Cardinalium,* II (Romae, 1677), 29. Petrus Saxo is also mentioned in H. Zimmermann's *Die Päpstliche Legation in der Ersten Hälfte des XIII. Jahrh.* (*Veröffentlichungen d. Görresgesellschaft, Sektion für Recht und Sozialwissenschaft,* Heft 17 [Paderborn, 1913], 84 f. He was at the Papal Court in Rome from January 18, 1217, to his death in 1219.

[12] C. 13, X (V, 31); A. Potthast, *Regesta Pontificum Romanorum,* No. 7844, I (Berol., 1874), 675. Cfr. Clausen, *Papst Honorius III* (Bonn, 1895), 378.

the said priest, and through him made restitution of his part of the loot.[13] Nicholas de Tudeschis (Panormitanus) simply says that it was rumored that the thieves had confessed to the said priest.[14] Since the priest, in his appeal to the Pope, pleaded that he knew of the theft only through confession, it is possible that the *Rectores* refused to believe his statement and therefore urged him to name the guilty person. Nevertheless, it is not impossible that an actual revelation of the matter of confession was demanded of the priest, either because, no restitution having been made, the confession was not believed to be sincere, or because the *Rectores Fraternitatis* claimed the right to demand the exposure of the confession in this case. The *Glossa Ordinaria* to the *Decretum Gratiani* mentions an opinion according to which a confessor, when it was demanded of him under pain of excommunication, could secretly communicate a confession he had heard to the bishop.[15] *William of*

[13] *Novella in Decretales Gregorii IX, c. dilectus* (c. 13, X, V, 31): *"forte alter ex furibus ad cor reversus unum ex libris furtive subtractis restituerat per hunc sacerdotem."* (Ed. Venet., 1489, *s. pag*).

[14] *Lectura in Decretales, c. dilectus: "Quidam fecerant quoddam furtum, qui, ut dicebatur, confessi fuerant super furto Ioanni presbytero in paenitentiali iudicio."* (Ed. Lugd., 1555, fol. 147^{v} b).

[15] *C. sacerdos* (c. 2, D. VI, *de Paen.*): *"Pone quod sacerdoti confitetur aliquis aliquod crimen, et excommunicat episcopus omnes huius criminis conscios, nisi veritatem revelaverint, est in quaestione, an presbyter ei revelare teneatur."* After quota-

Auxerre[16] records the opinion of several doctors, according to which the Seal of Confession may be broken for grave reasons. He himself considers this case hardly practical, but thinks that if it be possible without detriment to the penitent or to the Sacrament of Penance, the confessor might in an important case reveal the confession with the permission of the bishop.[17] Perhaps the *Rectores Fraternitatis* were guided by similar views.

tions *pro* and *contra*, the *Solutio* says: *"Dicunt quidam, quod in secreto episcopo dicere potest, utpote qui prodesse possit, non obesse XXII q. V hoc videtur."* The author of the Gloss inclines to the contrary opinion, for he continues: *"Alii contra, vel dic, ibi scivit ut homo, hic ut Deus, et praeterea iste non conscius nec sciens dici debet."* (Paris, 1547, fol. 613ᵛ a.)

[16] His *Summa* was composed before 1216. Cfr. Schmoll, *loc. cit.*, 129 f. F. Strake, *Die Sakramentenlehre des Wilh. v. Auxerre* (*Forschungen zur christl. Literatur und Dogmengesch.*, Vol. XIII, Heft 5); Paulus, *Die Ablässe*, I, 230.

[17] *Sentent.*, IV, *de Confessione*, q. 4: *"Ad hoc solent dicere magistri, quod in hoc debet sacerdos revelare confessionem et non infrangit sigillum, sed aperit, quia infrangere importat deformitatem; est enim infrangere indebite revelare."* To this William answers: *"Si revelat, dicit confitens confessionem revelatam esse; ergo facit confessionem odiosam hominibus; sed haec est causa, quare non debet revelari confessio; ergo non debet eam revelare in hoc casu."* He then states his own opinion: *"In nullo casu revelanda est confessio, nisi forte ex aliquo matrimonio vel ex re aliqua, quae magnum detrimentum incurreret et nullum periculum immineret sacramento confessionis. Iste casus quasi impossibilis est . . . si tamen esset possibile, magnum periculum immineret ecclesiae, si non revelaretur confessio, posset eam confessor revelare ex consensu episcopi, aliter non."* (Ed. Paris., 1500, fol. 270ᵛ b).

In opposition to such views Honorius in his famous Decretal energetically defends the integrity of the Seal by declaring the demand of the *Rectores Fraternitatis* to be pernicious (*perniciosum*) and ordering them to desist from molesting the confessor, thus officially rejecting the opinion that in certain cases the confessor may reveal a confession to his ecclesiastical superiors if it is demanded of him under threat of ecclesiastical censure.

In concluding this section we wish to quote from a sermon of St. Antony of Padua († 1231), which offers an interesting commentary on the law laid down by the Lateran Council. "The confession," he says, "is made in secret; remote from any human knowledge, it is confided to the memory of the priest and protected against all human knowledge by an inviolable seal, in such a manner that if all men on earth knew the sins of him who confessed to you, you must nevertheless cover them by an inviolable silence. They are truly children of the devil, rejected by the living and true God, debarred from the Church Triumphant, cast out of the Church Militant, removed from their ecclesiastical office and handed over to public infamy, who not merely by words—which would be worse than any kind of murder—but also by signs, or in some other manner, secretly or openly, by derision or applause, reveal and expose what has been confessed to them. Nay, I maintain that whosoever reveals the confes-

sion made to him, sins more grievously than the traitor Judas, who sold the Son of God, Jesus Christ, to the Jews. I confess to a man not as a man, but as one who holds God's place. The Lord says in Isaias:[18] *'My secret to myself, to me alone.'* And man, made of clay, should he not preserve the secret of confession in the innermost recesses of his heart? Very pertinently, therefore, has it been said that confession must be an uninhabited and inaccessible land, so that no man has access to the secret of confession." The Saint applies Exodus XIX, 12 sq.[19] to the confessors, whom he addresses in these words: "Take heed, therefore, ye confessors, ye priests, that you go not up into the mountain. To go up into the mountain means to reveal the secret of confession. You shall not climb it, neither shall you touch the borders thereof. The borders of the mountain are the circumstances connected with confession, which you may not touch either by word, or sign, or in any other manner whatever. But alas, there are some who indeed fear to go up into the mountain, but do not dread to touch its borders by revealing the circumstances of sins by certain expressions and signs. Let these unfortunate persons hear their condemnation:

[18] Is. XXIV, 16.

[19] Exod. XIX, 12–13: *"Constituesque terminos populo per circuitum, et dices ad eos: cavete ne ascendatis in montem nec tangatis fines illius; omnis qui tetigerit montem, morte morietur. Manus non tanget eum, sed lapidibus opprimetur aut confodietur iaculis; sive iumentum fuerit sive homo, non vivet."*

'Every one, saith the Lord, that toucheth the mount, dying he shall die.' But, O Lord, what a death? The arm of the civil power shall not seize him and hang him like a robber or a murderer; that would be too lenient; but he shall be stoned, *i. e.,* he shall incur the most severe excommunication and eternal damnation. Beast or man shall perish, *i. e.,* the uneducated as well as learned priests, or be it a layman or simple cleric to whom a confession may be made in case of necessity when a priest cannot be had, or be it a priest of the Church, he shall not live because he has gone up into the mountain and touched its borders." [20]

Barring the allegorical interpretation of the Scriptural text, St. Antony gives us here the views of his time on the strict obligation of the Seal of Confession, the violation of which he brands as a heinous crime. Adam Scotus (about 1186) expressed himself similarly in his *Soliloquia.*[21]

[20] *Sermo Moralis in I. Dom. Quadrag.; S. Antonii Patavini Sermones,* ed. A. M. Locatelli, I (Patavii, 1895), p. 45 f.

[21] *Soliloquia de Animae Instructione,* l. II, cap. V: *"Si certissime praelatum tuum hoc abominabilissimum et prorsus diabolicum facinorosissimum atque scelus damnabile velle perpetrare cognoveris . . ."* (Migne, *P.L.,* CXCVIII, 869 A). On Adam Scotus, consult Hurter, *Nomenclator,* II, 213.

PART II

THE SEAL OF CONFESSION IN CANON LAW AND THEOLOGY

The law enacted by the Fourth Lateran Council (1215) was renewed during the succeeding centuries by numerous provincial councils and diocesan synods [1] and its observance inculcated. But since these ordinances are more or less merely verbal repeti-

[1] Thus at the provincial synod of Rouen 1223, c. 9 (Mansi, XXII, 1199); at the Scots Council of 1225, c. 57 (*ib.*, 1238); at Treves, 1227, c. 4 (*ib.*, XXIII 29); at Mayence, 1233, c. 14 (Hefele, V, 26); at Fritzlar, 1243 (Mansi, XXIII, 726); at Mayence, 1261, c. 8 (*ib.*, 1082); at Pennafiel, 1302, c. 5 (*ib.*, XXV, 102); at Mayence, 1310 (*ib.*, 344); at Treves, 1310, c. 121 (*ib.*, 282); at Lambeth, 1330, c. 2 (*ib.*, 893); at Prague, 1349, c. 11 (*ib.*, XXVI, 101); in the Magdeburg provincial statutes of 1389–1403 (Hartzheim, V. Supplem., 719); at Upsala, 1443–1448, c. 45 (Hefele, VIII, 23); at Sens, 1524 (Bouchel, *Decret. Eccles. Gallic.*, II, 241); at Mayence, 1549, c. 29 (Hartzheim, VI, 571); at Bourg, 1584, c. 15 (Mansi, XXXIV, 901); at Salerno, 1596, c. 13 (*ib.*, XXXV, 987); at Malines, 1607, tit. V, c. 6 (*ib.*, XXXIV, 1448); at Cambrai, 1631, tit. X, c. 13 (Hartzheim, IX, 551); at Naples, 1699, tit. V, c. 6 (*Collectio Lacensis*, I, 185); at Bahia, 1707, c. 43 (*ib.*, 851); at Avignon, 1725, tit. XXX, c. 3 (*ib.*, 535); at Rouen, 1850, Decret. 17 (*ib.*, IV, 529); at Cologne, 1860 (*ib.*, V, 531); at Prague, 1860 (*ib.*, V, 512).

tions of the Lateran canon, no conclusions can be drawn from them as to the practical form and development of the Seal. But we are able to trace this development in the canonical and theological commentaries, especially in the so-called penitential *Summae*.[2] From these we can learn the practical application of the canonical regulations concerning Penance since the 13th century. The purpose of these *Summae* was to enable confessors to acquire a practical knowledge of moral theology and canon law; but they by no means confined themselves to what was absolutely necessary. In the *Summae* of Monaldus, John of Freiburg, Astesanus, Bartholomew of Pisa, Angelus of Chiavasso, and Sylvester Prierias the confessor could find nearly everything which he needed for the administration of the Sacrament of Penance. Thus the penitential *Summae,* which had replaced the earlier penitential books, dominated so to speak the entire *forum internum* [3] until they in turn were supplanted by the works of the moralists in the 16th century.

[2] Cfr. on this point Roderich Stintzing, *Geschichte der populären Literatur des röm.-kan. Rechts in Deutschland zu Ende des 15. und am Anfange des 16. Jahrhunderts* (Leipzig, 1867), 489–547; Schulte, *Geschichte der Quellen,* II, 408–456; Dietterle, *"Die Summae Confessorum,"* in the *Zeitschr. für Kirchengesch.,* XXIV (1903), 353 ff., 520 ff.; XXV (1904), 248 ff.; XXVI (1905), 59 ff., 350 ff.; XXVII (1906), 70 ff., 161 ff., 296 ff., 431 ff.

[3] Cfr. Dietterle, *l. c.,* XXIV (1903), 353 ff.

§ 1. SACRAMENTAL CONFESSION AS THE BASIS OF THE SEAL AND THE RELATION OF BOTH TO INTENDED FUTURE SINS

A. The Views of Older Canonists Concerning the Revelation of Confession for the Purpose of Preventing a Plot

Since the 13th century canonists and theologians are unanimous in emphasizing the strict obligation of the Seal of Confession. But the question, what kind of confession carries with it this obligation, is answered by them in various ways.

The Fourth Lateran Council designates the *"iudicium paenitentiale"* as the basis of the sacramental seal.[4] It follows that the confession of sins must somehow be directed towards the tribunal of Penance. This relation is established when a person submits his sins to the judicial power of the priest for the purpose of obtaining forgiveness. If this purpose were entirely excluded, there would be no relation to the Sacrament of Penance and hence no basis for the sacramental seal.

May a confession made without contrition and without due purpose of amendment be called a sacramental confession? Is the confessor bound to silence

[4] C. 12, X (V, 38): *"qui peccatum in paenitentiali iudicio detectum praesumpserit revelare."*

if the penitent tells him that he is determined to commit a crime? May he, nay, must he not in this case make use of his knowledge to prevent the proposed crime, especially if innocent persons or the common welfare are in danger? This fundamental query in various forms has occupied the minds of theologians and canonists until the present day.

One of the first to discuss the question was *Huguccio* (+ 1210) in his extensive commentary on the *Decretum Gratiani* (about 1188). He holds that whenever anyone accuses himself of a sin in confession, but, despite the exhortations of the confessor, refuses to do penance or to abandon his sin or sinful intent, the confessor, while not permitted to reveal the matter, may communicate it secretly to persons who are likely to persuade the penitent to desist from his evil purpose and will not injure him, *e. g.,* to his father, mother, or wife, to the bishop or some such person.[5] As his authority for this state-

[5] Huguccio's text is defective in this passage, at least in Cod. Vatican. Lat. 2280, fol. 310ᵛa, and in Cod. Bamb. Lat., P. II, 28, fol. 418b, which here agree verbatim. We read: *"Si dubitat* [*sacerdos*] *qualiter de tali peccato debeat iniungere penitentiam, secure consulat peritiores. Et si vult tacito quod illud peccatum sit ei manifestatum. Episcopo tamen suo in tali articulo, sc. ut eum consulat de modo penitentie, satis credo quod possit dicere secreto illud peccatum talibus personis que possunt prodesse et non obesse, ut patri et matri et episcopo et similibus arg. XXII q. V hoc videtur."* (Cod. Bamb, *l. c.*).—In the first part Huguccio discusses the question how the confessor must act if he needs advice or if he has to consult the bishop concerning

ment Huguccio refers to a passage from Augustine, cited by Gratian.[6] There the question is raised, what should be done if one catches another on the point of swearing falsely, and cannot prevent him from doing it by admonition. If he remains silent, he shares in the other's sin, according to Holy Scripture; if he reports the matter to the authorities, he will perhaps deliver his fellowman unto death, which seems to be a sin against charity. St. Augustine decides the question by saying: Holy Scripture is complied with when the matter is communicated to persons who can do the offender more good than harm, *e. g.,* the priests. Huguccio applies this decision to sacramental confession, and says a communication of this sort made by the confessor would be no violation of the Seal.

certain sins. Before *"talibus personis"* a part of the sentence has evidently been omitted. Of this Guido de Baysio (+1313) furnishes evidence when he reproduces the passage in the following words: *"Huguccio credit, quod in articulo, ubi consulit episcopum de modo paenitentiae, in secreto possit dicere illud peccatum etiam nominata persona, et si habita confessione ille nollet desistere ab illo peccato, credit quod dicere possit illud peccatum in secreto talibus personis," etc.,* as above (*Rosarium Decreti,* in cap. 2, d. VI, *de Paen.,* edit. Venet., 1495). The same meaning may be gathered from Huguccio's argument on cap. 8, C. XXII, q. 5, to which he appeals, as also from his comment on cap. 19, C. II, q. 1, where nearly the same words recur.—The quotation from the Cod. Vatican. I owe to the kindness of Prof. Gillmann of Würzburg.

[6] C. 8, C. XXII, q. 5 = August., *Quaestiones in Heptateuchum,* III, qu. 1.

Caesarius of Heisterbach (about 1223–24) defends a similar view by declaring it lawful to prevent future dangerous crimes on the part of impenitent sinners by denouncing them.[7] He appeals to a decision of *Innocent III,* the authenticity of which can, however, not be established from any other source.[8]

[7] *"Peccata quidem confitentium in multis casibus prodere poterit tacitis personis; ipsas vero personas prodere non debet nisi in uno casu quem infra hoc quinquennium dominus Innocentius papa tali modo determinavit."* (*Dialog.,* III, 31, Coloniae, 1851, 149). Concerning the date when this dialogue was written see Koeniger, *Die Beicht nach Caes. v. Heisterb.,* p. 2.

[8] Caesarius tells the story as follows: A monk, though not a priest, used to celebrate Mass in a Cistercian monastery. One day he accused himself of this in a confession made to the abbot, but refused to desist from his sacrilegious conduct. The abbot, amid tears, besought the unfortunate man, admonished and commanded him to desist, but in vain. The monk, dreading to expose himself before his associates, continued to say Mass as before. The abbot then proposed to the general chapter the question, how a confessor should act if a case like this occurred in a monastery. None of the abbots dared to decide the matter and the case was finally appealed to Innocent III. The Pope consulted several Cardinals and experts in Canon Law, who were almost unanimously of the opinion that the confession must be kept secret. Thereupon Innocent said: *"Ego dico confessionem in tali articulo esse prodendam, quia talis confessio non est confessio, sed blasphemia; nec debet confessor blasphemiam tantam ac insaniam celare, per quam periculum incumbere poterit toti ecclesiae. Et placuit sententia omnibus. Scripsit sequenti Capitulo, quod a se fuerat determinatum et a Cardinalibus approbatum."* (*Dialog.,* III, 32, ed. Colon., 1851, 149). Although this decision is reported nowhere

The most lucid treatment of our case is contained in a penitential found in numerous manuscripts [9] of the 13th–15th centuries, which begins with the words: *"Cum miserationes Domini sint super omnia opera eius."* The headings: *"Summa Innocentii"* [10] *"Innocentii Papae,"* [11] or *"Innocentii IV,"*[12] also *"Summa Thomae,"* [13] have probably contributed not a little to its wide dissemination. As a matter of fact the author is an Englishman, Thomas Chabham, vice-dean of the cathedral chapter of Salisbury, who wrote his *Summa de Poenitentia* not long after the IVth Lateran Council. Among the Munich manuscripts the

else, it does not sound altogether improbable. It is possible that Innocent had in mind the view of his former teacher, Huguccio, who was a celebrated canonist. Moreover, Caesarius was probably well informed on the contemporaneous affairs of his own order. John Lannoy mentions Caesarius' account and is of the opinion that the Lateran Council recalled the decision of Innocent. (*Epist. II ad. Ant. Varillanum. Opp. Omn.*, V, 2, Coloniae 1732, p. 43.)

[9] Thus, *e. g.*, in the Munich Royal and State Library in Cod. Lat. 2731, 2778, 5362, 5899, 7067, 12011, 16100, 17029, 18406.

[10] Clm. 16100.

[11] Clm. 2778, 18406.

[12] Clm. 2731, 5899, 7067, 12011.

[13] Clm. 5896, 16090. Cfr. v. Schulte, *Geschichte*, II, 528. *Dictionary of National Biography*, IX (London, 1887), 429; H. F. Rubel, *Chabham's Penitential and its Influence in the Thirteenth Century* (Publications of the Modern Language Association of America, XL, Menasha, Wisconsin, 1925), 225–239. According to N. Paulus, *Gesch. d. Ablasses*, I, 229, this penitential was printed twice in the XVth century. Cfr. Hain, *Repert. Bibl.*, No. 13153; No. 13154.

Codex Lat. 18,406 is probably the best and most complete. It comes from the monastery of Tegernsee, has 248 chapters, and was written in the 15th century. The 138th chapter, which bears the superscription, *De Sigillo Confessionis,* begins with inculcating the strict obligation of the Seal and pointing out the penalty for its violation. However, the author says that if the penitent confesses that he intends to take revenge, kill somebody, or set someone's house on fire, the confessor cannot pass this over in silence and allow the crime to be perpetrated. He should rather inform the father or a good friend of the penitent, saying to him: "Your son, or your friend, intends to do this or that; punish him, that he may not carry out his evil design, else you will be an accessory to the murder." If the penitent has no father or mother or friend to whom the priest can communicate the matter without danger, let him take into his confidence another priest, or a trustworthy citizen, and in their presence exhort his parishioner to desist from the evil deed. The others should declare that they would not tolerate such a deed. Perhaps it would be advisable, continues the penitential, for the priest to warn the person threatened in a general way and admonish him to be reconciled with his enemy if he has any, lest some evil befall him.[14]

[14] *"Sed esto quod quis confitetur, quod aliquem occidet aut domum eius comburet, quia forte patrem suum occidit, aut eum exhaereditavit, quid faciet sacerdos? debetne sustinere quod*

If, however, past sins are in question, which the penitent confesses, but of which he does not repent, then, according to our penitential, the above rule cannot be applied, but the priest must dismiss the penitent without absolution; he is not, however, permitted to reveal his sins.

Since *Raymond of Peñaforte* canonists have been wont to cite as a typical example the case of a heretic who admits his error in confession, but refuses to abstain from propagating it, or at least will not denounce his accomplices.[15] Raymond in his *Summa,*

ille occidatur, aut quod domus eius comburatur? Ad hoc s. Augustinus tale dat consilium in canone, sc. quod sacerdos hoc dicat tali, qui velit et possit prodesse et non obesse, ut, si ille malefactor patrem habeat aut aliquem propinquum amicum familiarissimum, dicat ei sacerdos: filius tuus aut amicus proponit tale malum facere. Castiga ergo ipsum et corrige, ne possit tantum facinus perpetrare; aliter enim eris particeps criminis et reus homicidii. Si autem ille nec patrem nec matrem nec aliquem habeat amicum, cui sacerdos hoc possit secure revelare, assumat sacerdotes et alios bonos viros secum, de quibus sit certus, quod illum non trahant ad mortem et his presentibus parochianum suum moneat, ut a proposito tam perverso desistat. Et ei dicant alii, quod non sustinebunt quod in hoc facto tam scelerato procedat. Et forte non est malum quod sacerdos interim ad illum, cui facta est comminatio, accedat et sibi dicat: Si quem offendisti patrem eius occidendo aut ipsum exhaereditando, consulo tibi quod compositionem facias cum eo et ego ero inter vos mediator, aliter enim tibi poterit malum contingere." (Clm. 18406, fol. 37^{v} sq. collated with Clm. 2731, 12011, 16090). The entire passage is evidently a further development of Huguccio's teaching.

[15] This obligation was prescribed for clerics as well as lay-

completed in 1237,[16] gives three solutions of the question how a confessor should act in such a case. *"Ad hoc dicunt quidam, quod debet adire episcopum et dicere custodi: vigila super oves tuas, quia lupus est in grege,"* that is, he should call the attention of the bishop to the danger, without mentioning the name of the guilty person. Raymond continues: *"vel si placet, dic quod possit revelare talibus, qui possunt prodesse et non obesse."* This second view agrees with that of Huguccio, and Raymond leaves everyone free to act accordingly. Third, Raymond expresses his own view by saying: *"Praeterea quantum ad primum praecise videtur, quod non sit astrictus sacerdos propter vim paenitentiae, tum quia ille non agit paenitentiam, tum quia non servat fidem, cum sit hereticus et infidelis; ideo tali non est fides servanda. Et multae aliae rationes possent induci. Et idem in similibus."* [17]

Raymond does not intend to establish an exception to the Seal, but merely states that in his opinion there is no basis for the obligation in this case,— *"quia ille non agit paenitentiam," i. e.,* a confession made with the intention of continuing in sin is no

men by various councils. Cfr. Hinschius, *Kirchenrecht,* V, 383.[1]

[16] Cfr. Dietterle, *Summa Confessorum, l. c.,* XXIV (1903), 537; Paulus, *Geschichte des Ablasses,* I, 242.[4]

[17] *Summa de Paenitentia et Matrimonio,* l. III, tit. 34, § 60. (Avenione, 1715), 719. I collated with this Cod. Ms. Friburg. (saec. XIV), fol. 171 a-b.

sacramental confession at all, and hence the confessor is not bound to sacramental silence. What was said of heresy applies also to similar cases, according to Raymond, for he expressly remarks: *"et idem in similibus."* [18]

William of Rennes,[19] voices his opinion clearly in his *Apparatus* (1241) to the *Summa* of Raymond. He expressly says that the Seal of Confession applies to past, not to future sins. If anyone would confess to a priest that he was determined to commit murder or some other crime, the priest would not be bound to strict silence, but on the contrary, it would be his duty to communicate the matter to such persons as would be useful, not hurtful to the penitent. Also, when it can be done without sin or scandal, he must warn the person who is to be injured. The penitent, however, who confesses such a base intention, must be informed that his revelation will not be

[18] Cfr. Gandert, *Das Buss- und Beichtwesen gegen Mitte des 13. Jahrhunderts, vornehmlich nach Raymundus von Pennaforte, Johannes de Deo u. Henricus Hostiensis* (Halle, 1894), 34 ff., 49 ff.

[19] Cfr. v. Schulte, *Gesch. d. Quellen,* II, 413 f.; Dietterle, *"Summae"* (*Zeitschr. für Kirchengesch.,* XXIV (1903), 542 ff.). In the editions of Raymond's *Summa* of 1603 (Rome) and 1715 (Avignon) the *Apparatus* of William of Rennes appears incorrectly as *"notae Ioh. Friburgensis."* Cfr. v. Schulte, *l. c.,* II, 413.[2] As to the time when the *"Apparatus"* was written see Gillmann, *Zur Lehre der Scholastik vom Spender der Firmung u. d. Weihesakraments,* (Paderborn, 1920) 81; Paulus, *Geschichte des Ablasses,* I, 245.[3]

received under the Seal, and the confessor is not bound so to receive it.[20]

Vincent of Beauvais in his *Speculum Historiale,* completed about the year 1244, defends the same view, at least regarding heresy. He says: "In no case must the confession be revealed, except when the penitent accuses himself of heresy and perverts many, so that they may avoid him as a heretic after he has been admonished by the priest or, if need be, by the bishop. Hence the saying: 'Heresy is not subject to the Seal of Confession.' " [21]

[20] *Ad verbum: Quoniam qui peccatum in poenitentiali iudicio sibi detectum praesumpserit revelare. Commissum subintellige, non committendum, quia, si quis confitetur sacerdoti quod vult interficere hominem vel aliquid nequiter operari, non tenetur sacerdos omnino celare, sed tali personae revelare debet, qui possit prodesse et non obesse . . . debet etiam praemonere, quantum poterit sine peccato et scandalo, illum, cui alius proponit inferre damnum vel iniuriam et dicere ei, qui huiusmodi nequam propositum confessus est, quod nec recepit nec tenetur recipere sub sigillo confessionis.*" (*Raymundi Summa,* l. III, tit. 34, § 59, note 1 (Avenione, 1715), 718.

[21] *Speculum Historiale, lib. VIII, cap. 44: "Porro neque verbo neque facto neque signo debet sacerdos revelare peccatoris confessionem nisi in uno casu, scil. quando aliquis confitetur haeresim suam et multos corrupit, nec vult aliquo modo resipiscere: tunc enim sacerdos debet dicere omnibus ut vitent illum tamquam haereticum ipso praemonito: et per se, et per episcopum si opus est. Unde versus: Est haeresis crimen quod nec confessio celat.*" (*Bibliotheca Mundi seu Speculi Maioris Vincentii Burgundi,* IV [Duaci, 1624], p. 288). The same text, but without stating the source, is contained in the two editions of the *Specul.,* Venetiis, 1494, f. 91 ▾ 1 c; Venet., 1591, f. 97 ▾ 2

Other theologians also are of the opinion that since only sins which belong to the past can be matter of the Sacrament of Penance, and consequently of the Seal, the firm resolution to commit a sin at some future time militates against the nature of the Sacrament and hence also against the Seal. Thus, according to Alexander of Hales (+ 1245),[22] past sins are subject to sacramental silence, even when they are confessed without sincere contrition; not, however, those sins which the penitent is determined to commit later. The confessor in such a case would, however, be bound to silence in order to prevent scandal, unless weighty reasons excused him.[23] Pope In-

c., whilst in the Strasbourg edition of 1474, l. VII, cap. 48 is added: *"ex summa fratris Hugonis."* I could not inspect the very rare manuscript of Hugh of St. Cher's commentary on the Sentences; the author was professor in Paris from 1230–1232. Concerning Vincent of Beauvais, cfr. Hurter, II, 333 ff.

[22] Regarding the genuineness of the *Summa* of Alexander see Felder, *Geschichte der wissenschaftl. Studien im Franziskanerorden* (Freiburg, 1904), 190. Cfr. also Rütten, *Studien zur mittelalterlichen Busslehre mit besonderer Berücksichtigung der älteren Franziskanerschule* (Münster, 1902), 23 ff.; Schmoll, *Busslehre,* 135 ff.; P. Minges, *Franziskan. Studien,* II (1915) 211; A. Teetaert (de Zedelghem), *Doctrine d'Alexandre d'Alès au Sujet du Sacrement de Pénitence* (*Études Franciscaines,* XXXVII [1925] 337–354; N. Paulus, *Gesch. d. Ablasses,* I, 268 ff.

[23] *Summa Theol.,* Part IV, qu. 19 (*alias* qu. 78), membr. 2, art. 2: *"Ad evidentiam huiusmodi problematis nota, quod tripliciter potest aliquis peccatum confiteri: Uno modo confitendo peccatum praeteritum, quod nollet fecisse, nec proponit*

nocent IV (+ 1254) seems to have shared the opinion of Huguccio, for he permitted the confessor to communicate to friends and relatives the criminal purpose of the penitent if he could not prevent the sin in any other way. However, the passage in question is somewhat obscure.[24]

facere; et talis confessio clauditur sub sigillo. Alio modo potest quis confiteri peccatum praeteritum, quod nollet fecisse, non tamen proponit desistere, sed potius permanere, et talis confessio adhuc clauditur sub sigillo; quamvis enim peccatum, quod proponit facere de futuro, secundum se claudi non debet sub sigillo, tamen propter connexionem quam habet in confessione cum peccato de praeterito, quod nollet fecisse, sub sigillo habet occultari. Tertio modo potest quis confiteri peccatum praesens, non tamen ut praesens, sed potius ut est in proposito, de futuro. . . . Dico ergo quod non tenetur celare simpliciter, nec si sacerdos talem confessionem revelaret, posset condemnari tamquam violator sigilli confessionis . . . debet tamen celare ratione publicae honestatis, nisi inconveniens aliquod grave sequeretur; tunc enim credo quod non esset talis confessio penitus tacenda, . . . sed caute et secrete alicui, qui posset et vellet prodesse, innotescenda." (Ed. Colon., 1622, 600 b). The treatise on the Sacrament of Penance—except the *quaestio de potestate clavium*—appears to have been written by Alexander himself. Cfr. *Études Franc., loc. cit.*, p. 339.

[24] In his celebrated *Apparatus ad Libros Decretalium Gregorii IX* he makes the following remarks on cap. *"Omnis"* (c. 12, X, V, 38): *"Caveat sacerdos . . . ne . . . prodat peccatorem: nisi hoc faciat propter peccatorem, sc. dicendo illis, qui prodesse possunt, non obesse,"* but adds: *"alii tamen dicunt et forte melius, quod ex quo tamquam officialis et minister Dei recipit confessionem, non debet de ea aliquid revelare, sed totum dimittat illi cuius minister est, sc. Deo."* Then he continues: *"Fatemur tamen quodsi confessus fuisset quod vellet*

The celebrated canonist *Henry of Segusia,* commonly called *Cardinal Hostiensis* (+ 1271), touches on our subject in two passages of his writings. In his *Summa* (1253) [25] he permits only a general warning for the prevention of great crimes, without a designation of the penitent. If in such a case a revelation of the confession cannot be avoided, the confessor must desist, unless the penitent gives him per-

facere aliquod maleficium, sed dolebat, sed non poterat resistere tentationibus diaboli et volebat quod sacerdos oraret pro eo, quod de praeterita voluntate iniungeret ei paenitentiam, bene poterat vocare illos de quibus certum sit quod prosint, et quantum plus potest generalius iis dicere quod suadeant sibi, quod ab hoc peccato desistat. Et si non potest invenire viam impediendi nisi expresse revelet, revelabit expresse, quia in hoc non fuit minister Dei cum dixit, ego non possum cessare quin faciam tale peccatum; tunc enim tantum dicitur ut ministro confiteri, quando confitetur ut paeniteat; haec ratio non placet, quia bene credimus quod ut minister recipiat, etiam si in peccato remanere proponat." (Ed. Lugd., 1554, 207). Although the above-quoted passage is by no means clear, as is proved by the many different interpretations put upon it by later canonists, nevertheless Innocent seems to think it lawful to deter a penitent from his sinful intent by informing him, through the agency of friends, of what he confessed. It is only in the closing sentence that Innocent appears to reject the opinion that the confessor in this case is not bound to silence, not even towards other persons. For the rest, Innocent did not wish his commentary to be regarded as official, but only as embodying his private opinions. Cfr. Phillips, *Kirchenrecht,* IV (Regensburg, 1851), 320; Paulus, *Gesch. d. Ablasses,* I, 317.[2]

[25] Cfr. Gillmann, *Archiv f. k. Kirchenrecht,* CII (1922), 35.[4]

mission.[26] In his *Lectura*[27] a detailed commentary on the Decretals of Gregory IX, Hostiensis personally inclines to the stricter view, permitting the confessor to do all he can to prevent a crime without revealing the penitent or his confession, but forbidding him in any way to reveal the confession, no matter what misfortune may arise from his silence. At the same time, however, he expressly admits that the contrary opinion is entitled to respect: *"Posset tamen dici in predicto casu contrarium, nec enim est vera confessio, ubi non confitetur peccatum commissum, sed committendum, de quo nec paenitentia dari potest, et quod quilibet impedire tenetur."*[28]

In the commentary on the *Summa* of *Henry of Merseburg*[29] the obligation of the Seal of Confes-

[26] L. V, tit. *de Paenit. et Remiss.*, n. 53: *"Quid ergo, si scit [sacerdos] multa homicidia patrata, nisi hoc recitaverit? Dic quod in hoc casu potest revelare talibus, qui non possunt obesse, caute tamen, non specificando personam . . . sed si tale sit, quod non possit revelari sine confessionis proditione, nisi de consensu confitentis fieret, necesse est abstinere."* (Venetiis, 1570, fol. 474ᵛ b).

[27] *Lectura in Decretales Gregorii IX.* Hostiensis worked on this book until his death, in 1271; cfr. v. Schulte, *Geschichte,* II, 125.

[28] *Lectura,* l. V, tit. 38, *de Paenit. et Rem., c. Omnis* (Argentinae, 1512, fol. 341ᵛ b).

[29] On Heinrich v. Merseburg cfr. Kurtscheid in the *Franziskanische Studien,* IV (1917), 239 ff. His Commentary on the *Summa* exists in many manuscript copies and begins with the words: *"Fecit Deus duo luminaria magna";* it was written about A.D. 1250–60.

sion is also expressly restricted to sins actually committed. The confessor may, however, communicate proposed crimes to persons who are able to prevent them without detriment to the penitent.[30]

About 1280 *Monaldus* wrote his *Summa Casuum,*[31] which enjoyed great popularity on account of its alphabetical arrangement. In speaking of Raymond's case concerning heresy, Monaldus holds that the confessor must call the attention of the bishop to the danger, but he tolerates the opinion of those who believe that it is permissible to communicate to definite persons the matter confessed by the penitent, nay, according to Raymond, even to excuse the confessor altogether from sacramental silence. Monaldus, following William of Rennes, from whom he borrows the passage, expressly restricts the Seal of Confession to sins actually committed.[32]

[30] Lib. V, tit. 38: *"Nota tamen quod canones qui lati sunt contra revelantes confessionem non extenduntur nisi ad peccata, peccata dico iam commissa, non committenda, quia si quis confiteretur sacerdoti quod vellet interficere hominem vel aliud aliquid, sacerdos non teneretur omnino celare, sed tali personae revelare deberet quae prodesse posset potius quam obesse secundum consilium Augustini."* (*Cod. Regiomont.* [*Königsberg*], 47 (101 Steffenhagen), f. 109ᵛ 1. c.)

[31] Cfr. Stintzing, *Geschichte,* 503 ff.; v. Schulte, *Geschichte,* II, 414; Dietterle, *"Summae"* (*Zeitschr. für Kirchengesch.,* XXV (1904) 248 ff.); H. Repič in *Archivum Franciscanum Historicum,* I, (Quaracchi, 1908), 231–234.

[32] *Ad v. "Paenitentia": "Penitens si confitetur se esse in heresi, a qua non vult exire, confessor tenetur ire ad episcopum et dicere sibi: Invigila super gregem, quia lupus est in grege,*

The author of the *Opuscula* ascribed to *Pope Celestine V* (+ 1296)[33] writes: "Whenever someone tells the confessor something injurious to others, he may reveal it to those who are likely to benefit the penitent, but not to injure him; however, this must be done cautiously, without naming anybody. Many are of the opinion that a priest is not bound to observe sacramental silence in respect to a heretic or an infidel.[34]

John Andreae in his Commentary on the Decretals of Gregory IX (written about 1336),[35] reproduces

et etiam secundum quosdam potest revelare talibus, qui possunt prodesse et non obesse, nec est astrictus sacerdos propter vim penitentie, tum quia ille non agit penitentiam, tum quia non servat fidem, cum sit infidelis, et ideo tali non est fides servanda, et similiter posset dici de aliis similibus." (Ed. Lugd., 1516, fol. 178 b sq.). I have collated this text with the manuscripts in the Royal and State Library at Munich, Cod. Lat. 2715 (saec. XIV), 6801 (saec. XIV), 8023 an. 1290. The latter manuscript is evidently one of the oldest, but it contains only the second part of the *Summa*.

[33] Cfr. Giuseppe Celidonio, *La Non-Autenticità degli Opuscula Coelestina*, Sulmona, 1896.

[34] *Opusc.*, VIII, c. 18: "*Si vero detegantur confessario quae sint in praeiudicium aliquibus, potest revelare talibus qui possint prodesse et non obesse, caute neminem nominando; haeretico autem et infideli non tenetur sacerdos secundum multos.*" *Maxima Biblioth. Veter. PP.*, tom. XXV, Lugduni 1677, 831 A. Cfr. Chr. Urbain, "*Le Secret de la Confession sous l'Ancien Régime*" in the *Revue du Clergé Français*, XLI, 1905, 472).

[35] Cfr. v. Schulte, *Geschichte*, II, 220 ff.; Gillmann, *Zur Frage der Abfassungszeit der Novelle des Joh. Andreae zu den Dekretalen Greg. IX.*, in *Archiv f. k. Kirchenrecht*, CIV (1924), 261.

the above-mentioned passage literally from the *Lectura* of Cardinal Hostiensis as reflecting his own opinion. He does not object to the laxer view, although towards the end he again inclines to the stricter opinion, supporting it with a reference to Innocent IV.[36]

Decidedly in favor of the milder view is *Henry Bohic,* a contemporary of John Andreae, who lectured on canon law at the University of Paris until about 1350.[37] In his minute *Distinctiones in Libros V Decretalium* he expresses the opinion that in regard to future transgressions the confessor is bound to natural, but not to sacramental silence, because there is no sacramental confession in such a case.[38]

In a similar sense writes *Peter Ancharanus,* who a half century later occupied the chair of John Andreae in Bologna (+ 1416).[39] Whilst the latter, as we saw, inclined to the stricter view, without di-

[36] L. V, tit. 38, *de Paenit. et Rem., c. Omnis* (12): *"Posset tamen dici in praedicto casu contrarium, nec enim est vera confessio ubi non confitetur peccatum commissum, sed committendum, de quo nec paenitentia dari potest et quilibet impedire tenetur . . . dicit tamen Innoc., quod, ubi petit paenitentiam praeteritae voluntatis, bene est confessio."* (Ed. Venet., 1581, 127).

[37] Cfr. v. Schulte, *Geschichte,* II, 266 ff.

[38] L. V, tit. 38, *c. Omnis* (12): *"Credo quod confessor non tenetur celare hoc peccatum committendum in vi sacramentalis confessionis, quia ibi non est, sed bene in vi secreti, ut dixi supra"* [*sc. vi secreti naturalis*]. (Ed. Lugdun, 1498, fol. 78 a.)

[39] Cfr. v. Schulte, *Geschichte,* II, 278 ff.

rectly rejecting the milder, Ancharanus prefers the latter, for he writes: *"Vel aliter et melius secundum eum [sc. Ioannem Andream] [dic] quod tenetur revelare, quia ista non est vera confessio, ubi non confitetur peccatum commissum sed committendum, de quo nec paenitentia dari potest et quod quilibet impedire tenetur."* [40]

One of the most prominent advocates of this milder teaching is *Nicholas de Tudeschis,* frequently cited as *"Abbas Siculus"* or *"Panormitanus"* (+ 1445).[41] Referring to Innocent IV, he lays down the principle: "The sins committed, not those to be committed, are reckoned as communicated in confession." The priest must reveal the latter discreetly, so that they may be prevented. This view, of course, is justified only when it is certain that the penitent is determined to carry out his wicked purpose, not if he repents of it.[42]

The same doctrine recurs in a small penitential *Summa* preserved in the Munich University Library (No. 596, from the collection of Döllinger),

[40] *Lectura Aurea super V Libr. Decretalium,* l. V, tit. 38, *c. Omnis* (12), *ad verbum: caveat* (ed. Bonon., 1581, 198).

[41] Cfr. v. Schulte, *Geschichte,* II, 312 ff.

[42] *Lectura in Decretales,* l. V, tit. 38, *c. Omnis* (12): *"Tene hoc semper menti, quod peccatum commissum non committendum dicitur detegi in paenitentia, quod intellige, quando iste dicit se omnino commissurum, secus si paeniteret de voluntate praedicta; nam tunc est peccatum commissum respectu voluntatis."* (Ed. Lugdun., 1555, fol. 177 a).

an incunabulum printed at the close of the 15th century, in which it is plainly emphasized that such communications for the benefit of, and without any danger to, the penitent were not viewed as a revelation of confession in the sense of the Lateran Council. For, to the question whether the confessor may reveal the intention of the penitent, the author answers: By no means; but he must prevent the sin by going to the parents, who will not betray the penitent, but use their influence to deter him from the crime.[43]

One may perhaps be inclined to view the above-quoted statements as the private opinions of a few men of small importance. But towards the close of the 15th century three prominent penitential *Summae,* which served a large number of confessors as guides and advisors, defend the same view. One of them is the *Summa Angelica* of *Angelus Carletus,* who is commonly called *de Clavasio,* after his birthplace, Chiavasso. The work was written about

[43] *"Dubitatur, utrum, si aliquis confitetur, quod velit unum interficere aut velit ecclesiam incinerare, debetne confessor talem pandere? Respondeo quod nullo modo, sed debet praevenire ita, quod vadat ad parentes istius, qui eum non pandant, quod eum informent ne tale perficiat homicidium. Si autem non est parentatus, tunc assumat ecclesiasticas personas de quibus habet confidentiam, ut eum informent ne illud perficiat crimen. Simili modo vadat ad illum, quem interficere intendit, dicens: Vide, si quas habeas inimicitias, studeas eas complanare ne maius per illas periculum incurras."* (*Summa Paenitentiae,* 596, fol. 19).

1470 [44] and soon enjoyed a wide circulation.[45] The question whether a confession might in any case be revealed, Carletus answers as follows: *"Tertius casus secundum Innocentium et sequitur Panormitanus in cap. Omnis de paenit. et rem. est, quando quis confitetur se velle facere aliquod malum, quia istud non est dictum in paenitentiali foro et ideo pro ratione istius sacramenti non tenetur celare."* [46] The author then remarks that most theologians are of a different opinion and that he agrees with them, provided the penitent shows a good disposition and his sin will not harm anyone else. In this case, he says, the confessor is bound to silence, because such a confession disposes the penitent to sorrow and forgiveness of sins. But if the penitent firmly persists in his purpose, and the latter is dangerous to the public order or to some individual person, the confessor not

[44] Cfr. Stintzing, *Populäre Literatur,* 537 ff.; v. Schulte, *Geschichte,* II, 452; Dietterle, *"Summae,"* in *Zeitschr. für Kirchengesch.,* XXVII (1906), 296 ff.

[45] Luther says of this *Summa: "Vagatur passim non parvae opinionis liber ex colluvie omnium humanarum traditionum ceu sentina quadam collectus et confusus, qui Summa angelica inscribitur, quum verius sit summa plus quam diabolica."* (*De Captivitate Babylon., Opera Luth.,* ed. Ien., II (1555), 295 a). Therefore it need not surprise us that Luther, on the 10th of December, 1520, ordered the *"Summa Angelica"* to be burned, together with the *Corpus Iuris Canonici* and the Bull of Leo X. (Cfr. Stintzing, *l. c.,* 539).

[46] V. *Confessio ult.,* n. 7 (ed. *Venet.,* 1578, 232 a).

only may, but is bound to reveal it to him who is able to remedy the matter without danger to the penitent.

At almost the same time, but, it seems independently of Angelus of Chiavasso, *Baptista Trovamala de Salvis* wrote a penitential *Summa,* which was called *Baptistiniana,* but subsequently, after he had revised it, was known as *Summa Rosella.*[47] Speaking of the Seal, the author starts from the notion of sacramental confession, an essential part of which, he says, is that the self-accusation be made with the expectation and for the purpose of obtaining forgiveness. Such an intention is incompatible with the will or determination to commit a crime. Consequently, in such a case, according to Raymond and Innocent, the confessor is not bound to sacramental silence. If, therefore, the sin would endanger the public order or the life of some individual, the confessor would be justified in revealing it to those who, without detriment to the penitent, are able to prevent it. However, if it would cause injury to the penitent, the revelation of his sin would be a grievous offense, forbidden even when commanded by superiors.[48]

[47] Cfr. Stintzing, *l. c.,* 533 ff.; Dietterle, *l. c.,* XXVII, 431 ff.; E. d'Alençon in the *Dict. de Théol. Cath.,* II, 378 f.; N. Paulus, *Geschichte d. Ablasses,* III, 108 f.

[48] *Ad verb. Confessio primo, n. 1: "Peccatum quod non dicitur spe veniae, non potest dici dictum in confessione, nec*

The last of this series of penitential *Summae* is that of *Sylvester Prierias,* written in the year 1515.[49] In it the question with which we are concerned is treated in a manner similar to that of the *Summa Rosella,* with the same references to Innocent, Monaldus, and Panormitanus. In order that the confessor may reveal an intended crime, Sylvester expressly requires: (1) that there be not merely a temptation, but a firm resolve, in which case the confessor, in order to forestall scandal, should explain to the penitent that the sin confessed does not come under the Seal, and hence he will not receive it as such; (2) that the crime be directed against the public order or the welfare of an individual, in which case the confessor would be bound to reveal it, in as far as this can be done without injury to himself or for the benefit of his fellowmen or the penitent himself.[50] These limitations evidently refer only to the *secretum naturale;* for, like the *Summa Rosella,* Sylvester concludes from the absence of sacramental confession that there is no sacramental obligation in such a case.

tenetur sacerdos illud secretum tenere secundum Raymundum, intellege tamquam dictum in confessione sacramentali." (Ed. Norimb., 1488, fol. 35 a-b).

[49] Cfr. Stintzing, *l. c.,* 539; v. Schulte, *l. c.,* II, 453 ff.; Dietterle, *l. c.,* XXVIII (1907), 416 ff.; Michalski, *Diss. de Sylvestri Prieratis Ord. Praed. Magistri Sacri Palatii 1456–1523 Vita et Scriptis,* Part. I, Monasterii Guestfal., 1892.

[50] *Ad verb. Confessio* III°, n. 5 (ed. Venet., 1572, 289 b and 290 a).

Among other representatives of this school we may mention *Philip Decius* (about 1536),[51] who in his commentary *De Iudiciis* ranges the Seal of Confession under the precept of fraternal correction, saying: *"In delicto committendo correctio fraterna est de praecepto. Et sacerdos revelare potest delictum committendum, non commissum, ut notat Innocentius."* [52] *Francis a Ripa,* who lectured on Canon Law partly in Pavia and partly in Avignon until 1534,[53] after quoting various opinions, arrives at this conclusion: If the penitent shows some signs of contrition concerning his intention, *e. g.,* by asking the priest to pray for him in order that the temptation may leave him, the latter would be bound to keep the Seal: but where these sentiments are absent, Francis agrees with the opinion advocated by Innocent.[54]

According to the celebrated jurist *Jacob Mennochius* (+ 1607), the confessor must take the same attitude towards future crimes as toward other secrets confided to him, and hence may reveal them for good reasons, because only past, not fu-

[51] Cfr. v. Schulte, *l. c.,* II, 361.

[52] *In c. "cum non ab homine"* (c. 10, X, II, 1); ed. Lugduni, 1548, fol. 120, n. 10.—Decius, as he himself tells us, wrote the commentary on the said canon in the year 1507.

[53] Cfr. v. Schulte, *l. c.,* III, 444.

[54] *Tractatus de Peste,* § ult., n. 115 (ed. Lugd., 1564, fol. 32).—Cfr. Urbain in the *Revue du Clergé Français,* XLI (1905), 456 ff.

ture sins fall under the Seal of Confession.[55]

Angelus of Arezzo (about 1450) [56] and *Prosper Farinaccius* (1544–1618) [57] permit only a general warning, in so far as it is needed for preventing the contemplated crime, without, however, in any way naming the guilty person.[58]

B. The Gallican Teaching on the Obligation of the Confessor to Denounce Crimes against the State or Sovereign

The canonists thus far mentioned followed the principle that the confessor may reveal an intended

[55] *De Arbitrar. Iudicium,* l. II, casus 414, n. 10: " . . . *delictum perpetrandum non cadit sub sigillo confessionis, quae esse non potest de futuris delictis, sed sub sigillo secreti.*" (Ed. Colon., 1684, 559).

[56] *Tractatus super Maleficiis Verb.: "Et hai tradito la tua patria, n. 18:. . . credo quod si sacerdos manifestet illis quibus prodesse et non obesse potest, non specificando personam, v. gr. caveatis, quia tali die omnino et tali loco debet fieri tumultus vel aliquid scandalum in populo, tunc ego credo, quod hoc facere et propalare possit."—"Et quia non est confessio illa, ex qua non recipit nec recipere potest paenitentiam ut d. c. cum quidam.*" (Ed. Lugd., 1542, fol. 62 ^{v} a.)

[57] Cfr. v. Schulte, *Geschichte,* III, 462.

[58] *Opera Criminalia,* l. I, tit. V, qu. 51, n. 110: *"Non debet ullo pacto nominare personas, a quibus talia delicta committi debeant, sed sufficit notificare eis quorum interest, ut praecaveant, quia in civitate fit contra illum tractatus, et sic revelabit isto casu sacerdos delictum in genere non deveniendo ad specialitatem personarum aut facti, ex qua possit quis in cognitionem devenire.*" (Ed. Norimb. 4a, *s. a.,* I, 785).

crime only to those from whom the pentient need not fear injury. Whilst, therefore, they did not regard such a confession as sacramental, they demanded that no detriment result therefrom to the penitent.

But what if the parents or friends are unable to deter the penitent from his purpose? Might not the confessor in that case appeal to those who can surely and efficaciously prevent the crime, *e. g.*, to the civil authorities? This question obviously suggested itself and in course of time the opinion arose, especially in France, that the confessor is obliged to denounce conspiracies and seditious plots against the State or its ruler to the authorities. The external occasion which gave rise to this opinion was probably an ordinance of Louis XI, of December 22, 1477, commanding every citizen under pain of death to report any plot against the king or State of which he might have knowledge.[59] Although this law did not expressly say so,[60] it was nevertheless quite natural to ask, whether and to what extent confessors would be affected by it. An interesting case of the year 1523 will give us an idea of the views prevalent in

[59] *Ordonnance rendue au Plessis-du-Parc lez Tours* (D'Héricourt, *Recueil Général des Anciennes Lois Françaises,* X (Paris, 1825), 784. Cfr. Urbain, *Revue du Clergé Français,* XLI (1905), 459).

[60] Cfr. Senneville, *Le Secret de la Confession devait-on la Violer dans le Cas de Lèse-Majesté? (Revue des Questions Historiques,* IV (1868), 528 ff.)

those days. On account of the conspiracy of Charles of Bourbon against Francis I (1515–1547),[61] Hurault, Bishop of Autun, was subpoenaed as a witness, together with others. The Bishop declared that he knew of the affair only through confession and therefore could not testify. The judges assured him that it was not their intention to cause him to violate the sacramental seal. The first point to be determined, they said, was, whether or not a sacramental confession had been made. To obtain certainty on this point, they asked the Bishop three questions: (1) whether the Connetable Charles de Bourbon was wont to go to confession to him; (2) whether he had accused himself of all his sins; (3) whether he had asked for absolution. The bishop replied that the Connetable had confessed to him only on this one occasion; holding in his hand a particle of the true Cross, he had begun his confession in the usual manner, and then spoke only of the conspiracy. Absolution was not given to him. The judges thereupon urged the bishop to communicate to them the subject of the conversation, threatening him with the King's displeasure in case he refused. The Bishop declared himself disposed to give the desired

[61] Concerning this conspiracy cfr. Etienne Pasquier, *Recherches de la France,* l. VI, c. 12 (ed. Paris, 1665, 493 ff.). See also the article *"Rivalité de François I^er^ et de Charles-Quint, le Connétable de Bourbon"* in the *Revue des Deux Mondes* (1860), 885.

information, provided they could set his conscience at ease by convincing him that it was lawful to reveal such a confession. On November 2, 1523, the Bishop again appeared in court at Loches. The judges had meanwhile discussed the case among themselves and consulted a doctor of theology, a man of good repute, as they said. As a result they informed the Bishop that since the Connetable had not made a complete confession of his sins, nor confessed to him before or after, and since he had not asked for absolution, and the bishop neither gave him absolution nor imposed a penance, the transaction could not be considered a sacramental confession, and hence, in their opinion, the Bishop was free to tell them the facts. The Bishop thereupon revealed all he knew.[62] The question was again brought up

[62] The documents in this case may be found in Dupuy, *MS. de la Bibl. Nation.*, Paris, Vol. 484, fol. 220–221 and 228; Vol. 5, fol. 103. Cfr. Urbain, *l. c.*, 451 ff. If it is true that Charles de Bourbon, under pretence of a sacramental confession, sought to interest the Bishop in the conspiracy and ask his advice and assistance, there can, of course, be no question of the *sigillum sacramentale*. But we clearly encounter here the beginnings of the later school which declared political crimes to be not subject to the Seal of Confession. A similar case is said to have occurred in 1331. Robert of Beaumont laid claim to the County of Artois, in virtue of a certain document which he claimed to have discovered. This document proved to be a forgery. Robert fled; his confessor, a Dominican, was ordered to appear in the episcopal palace at Paris, but declared that he knew of the affair only through confession. Thereupon Peter de Palude, Patriarch-elect of Jerusalem, with the con-

by the repeated attempts on the lives of Henry III (1589) and Henry IV (1593, 1594, 1610). De Thou relates how crimes of this sort were brought into connection with confession and with the moral teaching of the Jesuits.[63] In fact, by persistent effort the enemies of the Jesuits succeeded in having them expelled from Paris in 1595, a monument of infamy was erected to them as accomplices in the murderous attempt of Jean Chastel, and their library was pillaged.

A few years later the Gunpowder Plot in England again attracted attention to the subject of the Seal. Father Garnet, S.J., was executed in London on May 3, 1605, because he had not denounced the conspiracy, although he knew of it through confes-

currence of all theologians present, is said to have told him that for the good of the country he might, without qualms of conscience, tell all he knew of the affair. I was not able to ascertain how far this account rests on facts. The writings of Peter de Palude are in every respect correct so far as the Seal of Confession is concerned. Lenglet du Fresnoy, who reports the case in his *Traité Historique et Dogmatique du Secret Inviolable de la Confession* (Lille, 1708, 96 ff.), is inclined to assume that an actual violation of the Seal took place in this case on account of a false view of it concerning future sins. Cfr. Lenglet, *l. c.*, 110 ff.

[63] *Historia sui Temporis* (*ad annum 1593*), V (Paris, 1630), 383–385. De Thou's story that some confessors, especially Jesuits, had encouraged the assassin Jean Chastel in the confessional and absolved him in advance from his crime, may safely be set down as a fable.

sion.[64] One of the conspirators, Thomas Winter, had told Father Greenway, S.J., of the plot in the confessional. Horrified at the revelation, the priest, with the consent of the penitent, consulted his superior, Father Garnet, likewise in the confessional. Garnet urged Greenway to do all in his power to dissuade his penitent, and through him the other conspirators, from carrying out their design. However, Greenway's efforts were in vain, and the two priests were powerless, because, on account of the Seal, they did not believe themselves justified in making use of their knowledge of the plot. Garnet's attitude gave rise to a lively controversy and furnished fresh material for attacks upon the moral teaching of the Jesuits. No less a person than King James I, who took a personal part in the controversy,[65] charged the Jesuits with setting up a new doctrine, formerly unheard of, regarding the Seal of Confes-

[64] Cfr. John Morris, *The Condition of Catholics under James I. Fr. Gerard's Narrative of the Gunpowder Plot,* London, 1871; *Stimmen aus Maria-Laach,* II (1872), 165–178; *Kirchenlexikon,* X² (1897), 635 ff.

[65] James I at first (1607) wrote an apology of the oath of allegiance under the title, *Triplici Nodo Triplex Cuneus, sive Apologia pro Iuramento Fidelitatis,* in which he attacked *inter alia* the doctrine of the Jesuits concerning the Seal. Bellarmine answered under the pseudonym of Matthaeus Tortus in a *Responsio ad Librum cui titulus: Triplici Nodo,* etc., (Coloniae, 1608). In reply James republished his apology with an amplified preface and sent it to the various courts, which in-

sion. Even among the Scholastics, he said, there is no one who does not teach and admit that, when it is necessary to prevent a great crime, the confessor may and must denounce the design of his penitent to the authorities, though the name of the penitent need not be revealed.[66] As James I had sent his polemical treatise to the various rulers and governments, Henry IV of France requested the Dominican Coeffeteau to prepare an official reply. This theologian follows the opinion that a conspiracy revealed in the confessional must be denounced, though without mentioning names.[67] Cardinal du Perron expresses the same view in his refutation of the treatise of James I.[68] He opposes a direct violation

duced Bellarmine to write a reply in his own name: *Pro Responsione sua ad Librum Iacobi Britanniae Regis* (Romae, 1609). Cfr. the article "Bellarmin" in the *Kirchenlexikon*, II², 290 ff.

[66] *Apologia pro Iuramento Fidelitatis: "Ut nulla proditio, nulla quamtumvis atrox ac diabolica coniuratio, quamvis ad totius imperii regnive pestem ac perniciem spectet, si sub confessionis sigillo revelata sit, prodi a sacerdote ac detegi debeat, ac ne res quidem ipsa vel indirecte aperiri, quo ingruenti malo obviam eatur; id vero, quamquam a paucis aliquot novitiis doctoribus, qui iesuiticas praeceptiones imbiberunt receptum sit, tamen tam novum est et periculosum dogma, ut neque rex, nec res publica in securo possit consistere, ubicumque thesis illa assertores invenerit."* (*Opera*, Londini, 1619, 336.)

[67] *Réponse à l'Avertissement du Roi d'Angleterre: "Il faut découvrir la conjuration sans exprimer la personne."* (Ed. Paris, 1610, 157). Cfr. *Revue du Clergé Français*, XLI (1905), 465 ff.

[68] Cardinal du Perron played an important part in the reign

of the Seal for this reason, among others, that no one would confess such an intention if he knew it would be divulged, and thus the confessor would be deprived of two effective means for ensuring the security of the monarch. The first, he says, consists in the fact that the priest, through confession, is in a position, and bound by his soul's salvation, to deter the penitent from his design by threatening him with the divine vengeance and to refuse him absolution; the second is that he can and must warn the monarch to be on his guard, because a plot has been hatched against his person, *i. e.*, he must reveal the confession in a general way, but not the penitent; not the criminal, but the crime.[69]

Cardinal Bellarmine, who was the first to defend the action of Father Garnet, and against whom the above-mentioned treatise was directed, likewise ad-

of Henry IV. His death, in 1618, prevented him from publishing his *Réplique à la Réponse du Roi de la Grande Bretagne,* which he had written by order of his king. It was published by his nephew, Jacob Davy du Perron (+ 1648 as bishop of Angoulême), who edited the works of his uncle in three folio volumes between 1618 and 1620. Cfr. P. Feret, *Le Cardinal Duperron,* Paris, 1876.

[69] *Replique à la Réponse du Roi de la Grande Bretagne,* l. II, observat. 2, ch. VI: ". . . *l'autre, qu'il peut et doit avertir le prince de prendre garde à soi et se tenir sur ses gardes et lui donner avis qu'il y a conspiration contre sa personne, c'est-à dire révéler non le confessant en particulier, mais la confession en général, et découvrir non le criminel, mais le crime.*" (*Opera Omnia,* II. Paris, 1620), 653.

mitted that a confessor may reveal a crime in order to prevent it, provided this is possible without endangering the penitent. He maintained, however, that this proviso was not realized in the case of Garnet. Would the King, he asks, upon a denunciation by Father Garnet, out of deference to the Sacrament, have desisted from ferreting out the guilty conspirator? Would he not rather, not believing in the Sacrament and considering the Seal dangerous to the State, have forthwith cast Father Garnet into prison and subjected him to exquisite torture in order to discover the traitor and his accomplices?[70] Another Jesuit, *Valerius Reginald* (+ 1623), called attention to the risk of an actual violation of the

[70] *Apologia pro Responsione sua,* c. XIII: ". . . *Sigillum vero confessionis sacramentalis posse detegi ad ingens detrimentum avertendum, modo persona confitentis reticiatur, non ignoro. Sed quaero a Rege, si Carnettus retulisset scire se Regi a proditoribus mortem imminere, an passus fuisset ob religionem sacramenti confessionis personam proditoris silentio praeteriri? Certe, qui confessionis sacramentum nullum esse credit, quique eiusmodi sigillum ut reipublicae maxime perniciosum aversatur, mox Carnettum rapi in vincula et exquisitissimis tormentis examinari iussisset, neque destitisset donec in cognitionem proditoris et omnium eius consciorum devenisset; licet igitur proditionem in sacramentali confessione cognitam verbis generalibus Christiano principi ac pio aperire, ut remedium eminenti malo paret, quia pro compacto habetur, eum principem nihil ultra fas interrogaturum; sed principi a vera religione alieno, qui sigillum confessionis divinitus imperatum irridet, et quem satis constat non passurum, ut persona confitentis lateat, nullo modo licet.*" (*Opera Omnia,* Paris, 1874, 186 ff.)

Seal connected with a general denunciation.[71] Although, speculatively speaking, such a denunciation might be permitted, nevertheless, in practice it was necessary to follow the contrary rule, since such a warning requires so much prudence and circumspection that it would be exceedingly difficult to avoid endangering the Seal of Confession and the safety of the penitent.[72]

This stricter view, adopted also by other members of the Society of Jesus, as we shall see later, was by no means new, nor introduced by the Jesuits. However, it served to raise new charges against the Order. Especially in France efforts were made to excite suspicion against the Jesuits in Henry IV, who had permitted them to return in 1603, and had chosen Père Coton as his confessor. Henry IV was very much agitated when Père Coton, in reply to his inquiry, declared the Seal must never be violated, not even to save the King's life. Père Coton

[71] *Praxis Fori Paenitentialis,* l. III, c. II, n. 15: ". . . *probabile quidem esse in speculatione: nihilominus tamen in praxi contrarium sequendum esse ordinarie, ob reverentiam Sacramento paenitentiae debitam. Quandoquidem in tali admonitione opus est tanta tamque multiplici circumspectione, ut difficillimum sit illam usurpantem non incidere in Sigilli sacramentalis violationem ac laesionem securitatis et libertatis confitentium.*" (Lugduni, 1616, 150).

[72] How easily such a general warning may lead to a discovery of the penitent may be seen from a case in Bruges, reported by Damhouder (+1518) in his celebrated *Praxis Criminalis,* c. 152, n. 9 (Antverpiae, 1646, I, 219 ff.).

calmed the King by assuring him that he would rather cast himself between the King and the assassin and receive the blow than to allow his royal master to be harmed.[73] A few years later (1611) the same malicious charges were again made to prevent the re-opening of the Jesuit college. The solicitor-general, Servin, tried hard to prevail upon Parliament to reject the petition of the Fathers. It was charged that the Jesuits deviated from the Sorbonne in their teaching, *e. g.*, concerning the Seal of Confession, the Gallican Liberties, etc., to all of which Père Balthasar, rector of the professed-house in Paris, replied: *"Verendum non est, ne in istis alisve quibuslibet doctrinae christianae catholicae capitibus a theologica facultate dissentiamus."* [74] However, this answer was not satisfactory to the opponents of the college. They demanded that the Jesuits subscribe to four articles, which were so

[73] *"Tu ergo, inquit rex, enixe persuaderes?—Sane inquit Cotonus, quam possem maxime. . . . Quid si, addidit rex, vel tu ille vel ille aliis non persuaderet? scelus videlicet perfici sineres?—Nequaquam, respondit Cotonus; sed corporis mei obiectu vulnus exciperem vel impedirem. Tune, inquit rex, mihi intentatum vulnus exciperes? Non vulnus, inquit ille, sed mortem excipere millies malim, quam ut regio corpori male eveniat. Arrisit rex et placide quaestioni modum imposuit."* (Roverius, *De Vita Patris Petri Cotoni,* Lyons, 1660, 126.) Cfr. Prat, La *Compagnie de Jésus aux Temps du P. Coton,* II, Lyons, 1876, 520; Urbain, *Revue du Clergé Français,* XLI (1905), 468.

[74] Jouvency, *Historia Societatis Jesu,* Paris, 1710, l. XII, n 92.

formulated that it was almost certain that they would be rejected.[75] The fourth article, which had reference to the Seal, read: *"Sacerdotem, cui per viam confessionis auricularis innotuit instans conspirationis vel paricidii regii periculum, aut attentatum crimen laesae maiestatis, adstringi ad revelationem huius secreti magistratui faciendam."*[76] The Jesuits took counsel with Cardinal Du Perron and other doctors of divinity. These took exception to the general tenor of the said article, but admitted the duty of the confessor to denounce the murderous intent, *without, however, divulging the plotter.* In this sense the

[75] Lochon in his *Traité du Secret de la Confession par un Docteur de Sorbonne,* published at Paris in 1708, denies (p. xvii) that the theological faculty held the opinion that a confessor may reveal an offence against the sovereign.

[76] Vassor, *Histoire du Regne de Louis XIII,* Tom. I, Amst., 1756, 215. The same is reported by J. A. De Thou, who at that time was a member of Parliament, in a letter to Casaubon, dated December 23 and 24, 1611. The fourth article reads here as follows: *"Les confessions secrètes se peuvent et doivent révéler en cas qui touchent le crime de lèse-majesté au premier chef."* (Dupuy, Bibl. Nation. Ms. Vol. 707, fol. 14). In the *Actions Notables* of the Solicitor-General Servin (Paris, 1640, p. 339) the passage reads simply: *"Les Jésuites promettront et protesteront par écrit de declarer ceux qui ont ou avaient ces exécrables desseins s'ils sont venus ou viennent à leur connaisance."* Urbain (*Revue du Clergé Français,* XLI, 1905, 469) is of the opinion that *the original draft of the article was altered before being printed.* Feret (*La Faculté de Théologie de Paris, Époque Moderne,* III, chap. III, p. 92) mentions only three propositions, but not the fourth, which has reference to the Seal.

Jesuits, on February 22, 1612, declared themselves ready to accept the teaching of the Sorbonne concerning the safety of the king.[77]

While the theologians thus strove to accommodate themselves to the civil law, leaving intact the obligation of the Seal, the advocates of Gallicanism, on the other hand, particularly the jurists, viewed the crime of *lèse-majesté* as an exception to the Seal, holding that a priest must in every case denounce the guilty person, and can be compelled to give testimony against him.

An example, illustrating this teaching is reported by *Bodin*. A nobleman confessed to a Franciscan friar that he had resolved to kill Francis I, but repented of his purpose. The friar gave him absolution, but reported the case to the civil authorities. The King sent the nobleman to Paris, where he was sentenced to death by Parliament and executed.[78]

Even Coeffeteau, who in a memorial to James I had defended a general denunciation without naming the culprit, seems to have adopted the view of the Gallicans after the assassination of Henry IV; for when, in 1616, a priest told him that one of his penitents had accused himself of intending to kill

[77] Cfr. Jouvency, *l. c.*, n. 93; Feret, *l. c.*, 93; Urbain, *l. c.*, 471 f.

[78] Bodin, *La Républiqué*, l. II, chap. 5, ed. Latina, Ursellis, 1601, p. 329. How far this account rests on facts cannot be determined. However, similar examples of a later period speak in favor of its credibility. Cfr. Urbain, *l. c.*, 460.

Louis XIII, Coeffeteau reported the case at once. The priest in question, Jean Cousin, attached to the Church of St. Martial in Paris, was cited before the court, but excused himself for not having reported the case by saying that the penitent had not had a firm intention, but merely a temptation, which he had resisted. When the accused young man stubbornly denied ever having gone to confession to Father Cousin, the case was dropped.[79]

A similar case occurred in Lorraine, in 1630,[80] where a Capuchin Father related that an old man had confessed to him that he and a few accomplices had decided to kill Duke Charles. As a result, a citizen of Epinal, Jean Saultard, was placed under arrest and held until 1635, in which year, Nancy having been ceded to France, the Solicitor-General resumed the investigation.

Besides these examples other testimonies confirm the above-mentioned view. Thus the Solicitor-General, *Étienne du Pasquier* (+ 1615), severely blamed the Jesuits for teaching: *"Cognito magno rei publicae periculo per confessionem sufficit generaliter monere ut caveatur."* [81] *Lawrence Bouchel,* a barrister in the Paris Parliament (+ 1629), states

[79] Dupuy, Bibl. Nation. Ms., Vol. 92, fol. 24 sq.; Urbain, *l. c.,* 466, note.

[80] Dupuy, Ms. Vol. 473, fol. 74 sq.; Vol. 492, fol. 22; Vol. 781, fol. 123; Urbain, *l. c.,* 470.

[81] *Catéchisme des Jésuites,* Paris, 1602, 109 f.

the opinion predominating at that time among the Gallicans of France as follows: "With us, as in the Catholic Church, the crime of *lèse-majesté* is henceforth exempted [from the Seal of Confession], so that a priest, in view of the gravity and importance of this crime, is justified if he reveals it." As a proof he refers to the case cited by Bodin and to the teaching of Ancharanus, Archidiaconus, Hostiensis, Ioannes Andreae, Nicholas de Tudeschis, and Francis à Ripa. "I do not know," he continues, "whether we must not go still farther and declare as an accomplice of so heinous a crime the priest who concealed the plot and failed to denounce it to the magistrate; in the first place, because the entire State may be thrown into confusion by such a calamity, and, secondly, because the sole reason for the Seal of Confession is the shame and disgrace of the penitent if he were to be punished for repented transgressions. This reason, however, is not of such weight or importance that the sacred person of the sovereign or the interests of his government must be placed in jeopardy on its account." [82] Add to this, he goes on to say, that the Gloss to the *Decretum* (*sc., can. Sacerdos, D. VI, de Paenit.*) also exempts the

[82] *La Bibliothèque Canonique* (ed. Blondeau, 1689), tom. II, 335. This work was first published in 1628, under the title, *Somme Bénéficiale.* Cl. Blondeau, who also was an attorney at Paris, rewrote the work and changed its title. Cfr. v. Schulte, *Geschichte,* III, 568.

priest from keeping the Seal of Confession when he is requested by his superiors to reveal a confessed sin under pain of excommunication.[83] There is no doubt, concludes Bouchel, that he who has knowledge of a conspiracy against the government or the king and does not denounce it, incurs excommunication.[84]

Some time later another Solicitor-General, *Denis Talon* (+ 1689), declared that a priest who knew of a plot against the king or the government might reveal it to the authorities without fear of incurring ecclesiastical censure.[85] Of the later Gallicans we may mention *Durand of Maillane,* who in his *Dictionnaire de Droit Canonique* (1761), adopting the opinion of Bouchel, expressly exempts the crime of *lèse-majesté* from the Seal of Confession.[86] *Jos. Nicol. Guyot* upholds the same principle in his *Ré-*

[83] Lenglet du Fresnoy (*Traité Historique et Dogmatique du Secret Inviolable de la Confession,* Lille, 1708, 134) believes the Gloss to be simply an error.

[84] Namely, in case the revelation would be demanded under pain of excommunication.

[85] *"Un prêtre auquel on déclare sous le sceau de la confession un attentat qui regarde le public, le doit révéler à ceux qui sont préposés au gouvernement de l'état, sans crainte d'encourir la censure que l'Eglise prononçe contre ceux, qui publient les fautes de leurs pénitents."* (*Œuvres d'Omer et de Denis Talon,* tom. V, Paris, 1821, 375).

[86] *"Il faut excepter de cette règle* [*sigilli strictissime servandi*] *le crime de Lèse-Majesté au premier chef."* (*Dictionnaire,* Lyons, I², 1770, *s. v. "Confesseur"*).

pertoire Universel et Raisonné de Jurisprudence Civile, Criminelle, Canonique et Bénéficiale (1784).[87]

This view of the Seal, as it was developed in France since the 16th century, has the characteristics of an aberration from the teaching of the authorities to whom an appeal was made. The older canonists adhered to the principle that a criminal proposal which the penitent refuses to give up or prevent, may be revealed to such persons only as could and would deter him from his design without injury to him.[88] They argued that such a confession would not be sacramental or that to reveal its contents at least would be no *proditio confitentis* in the sense of the Lateran Council. The Gallicans, on the other hand, maintained that such a crime must be prevented by denouncing it to the proper authorities and naming the guilty person, even in case he had repented and given up his design. That is, they claimed that this is a legitimate exemption from the Seal, and not due to the absence of sacramental confession. This doctrine was adopted more or less by the Protestants of the 17th and 18th centuries,[89] and to some extent

[87] Ed. Paris., tom. IV, 1784, 420; cfr. v. Schulte, *Geschichte*, III, 650. On the later and more correct view see M. Gregoire, *Histoire des Confesseurs des Empereurs, des Rois et d'autres Princes* (Paris, 1824) p. 90 ff.

[88] Cfr. *supra* 129 sqq.

[89] Thus the Edict of Nantes (1598) ordained: *Les ministres, anciens et diacres des Églises réformées, ne pouvaint être contraints de témoigner au justice et de révéler ce qui aurait été*

has been preserved in civil legislation up to the present day.

C. The Correct View—The Solution of the Difficulty by a Precise Definition of Sacramental Confession

Although the view that the confession of a penitent may, under certain circumstances, be revealed, had eminent men among its defenders, the majority of canonists and theologians since the 13th century favored a stricter view of the Seal. *Alexander III* in a letter to the bishop of Beauvais (about 1180)[1] expressed the opinion that a confession of sins must not be rejected even when the penitent cannot be absolved because he has no purpose of amendment.[2]

dénoncé en leurs consistoires afin de le censurer, excepté si le crime touchait le roi ou l'état." (Urbain, *l. c.*, 462).—Cfr. Pertsch, *Das Recht d. Beichtstühle,* Wolfenbüttel, 1738, 601; H. Böhmer, *Ius Ecclesiasticum Protestanticum,* l. V, tit. 38, n. 50; Andres, *Neues Archiv des Kriminalrechtes,* II, 1818, 151 ff.; Uihlein, *De Sigillo Confessionis,* Heidelberg, 1828, 80 f. In the schismatic Church of Russia Peter I made it a duty of the confessor to report confessed sins in two cases: (1) In case of a conspiracy against the sovereign where the penitent will not listen to the admonitions of the priest; (2) In case of the propagation of false miracles, if the admonitions of the confessor remain fruitless. Cfr. Knie, *Die russisch-schismatische Kirche, ihre Lehre und ihr Kult,* Graz, 1894, 82 f.

[1] Jaffé-Löwenfeld, *Regesta,* II², n. 13722, places this Decretal in the period between 1179 and 1181.

[2] C. 5, X (V, 38): "*Quod quidam sicut asseris, ad confes-*

Thus the obligation of the Seal was, in a certain sense, attached to a confession of this kind. Most of the later theologians, therefore, refer to the quoted decision of Pope Alexander.

Exceedingly significant is the attitude of *St. Thomas Aquinas* [3] (+ 1274), who in his Commentary on the Sentences of Peter Lombard [4] expressly rejects the view that only those sins are subject to the Seal which the penitent promises to avoid, for the reason that the absence of contrition and of a firm purpose of amendment does not alter the sacramental character of confession any more than the want of a proper disposition (*fictio*) changes the essence of

sionem de criminibus veniunt et quamvis confiteri velint, se tamen asserunt abstinere non posse, consultationi tuae taliter respondemus, quod eorum confessionem recipere debes et eis de criminibus consilium exhibere, quia licet non sit vera huiusmodi paenitentia, admittenda est tamen eorum confessio et crebris et salutaribus monitis paenitentia est indicanda."

[3] v. Schulte, *Geschichte,* II, 279, remarks: "Although he [Thomas] wrote no works on Canon Law in the strict sense of the term, nevertheless by his influence on all the theological disciplines of the latter part of the Middle Ages, he is of inestimable consequence for Canon Law. The study of his writings is indispensable for understanding the intrinsic development of all points of Canon Law which are in any way connected with theology and of the principles of law and justice in general."

[4] The *Libri Sententiarum* were written in 1253–1255. Cfr. Göttler, *Der hl. Thomas von Aquin und die vortridentinischen Thomisten über die Wirkungen des Busssakramentes,* Freiburg, 1904, 8 f.; M. Grabmann, *Thomas von Aquin* (Kempten, 1912), 16, n. 2; N. Paulus, *Gesch. d. Ablasses,* I, 271.

Baptism.[5] In another passage he says: Sacramental confession (which carries with it the obligation of the Seal) consists in the self-accusation which the penitent makes to the priest with the hope of obtaining pardon.[6] By means of this intention the accusation, according to St. Thomas, is directed toward the Sacrament of Confession, no matter whether the latter is actually administered or not.

Peter of Tarentaise, afterwards Pope Innocent V (+ 1276), who wrote his commentary on the Sentences about 1256–65,[7] distinguishes between an offence against morals and one against the faith. In the latter case, he remarks, the ancient theologians said it may be revealed. Hence the saying: *"Haeresis est crimen, quod nec confessio celat."* He himself, however, declares: In no manner may he [the confessor] reveal it, and only in a general way may he warn the bishop.[8]

[5] *Sentent.,* l. IV, d. 21, qu. 3, a. 1, sol. 1: *"Dicendum, quod quidam dicunt, quod sacerdos non tenetur servare sub sigillo confessionis nisi peccata de quibus paenitens emendare promittit: alias potest ea dicere ei, qui potest prodesse non obesse. Sed haec opinio videtur erronea. . . . Sicut enim baptismus est sacramentum, quamvis quis fictus accedat: nec est mutandum proper hoc aliquid de essentialibus sacramenti; ita confessio non desinit esse sacramentalis, quamvis ille, qui confitetur, emendationem non proponat; et ideo nihilominus sub occulto tenenda est."* (*Opera Omnia,* Vol. X, Paris, 1889, 597 f.)

[6] *Sent.,* l. IV, d. 17, qu. 3, a. 2 (*l. c.,* 503 f.).

[7] N. Paulus, *Geschichte des Ablasses,* I, 301.

[8] Petrus a Tarentasia, *In Quatuor Libros Sententiarum*

Many later theologians simply adopted the teaching of St. Thomas. As the first we may mention *John of Freiburg* (+ 1314).[9] In his Penitential *Summa* (1290–98) he rejects the more liberal opinion of Raymond, mentioned above, supporting his own view by a reference to St. Thomas and the Lateran Council.[10] *Brother Berthold,* who at the beginning of the 14th century edited the *Summa* of his confrere in the German language, sides with him.[11] Having emphasized the strict obligation of the Seal, he continues: "In case, however, this [obligation] would cause injury and disgrace, if he [the confessor] would conceal it, he should prudently shield the man from injury and disgrace, but he may not name him." [12]

Commentarii (Tolosae, 1649–52), l. IV, dist. 21, qu. 4, art. 1, p. 242.

[9] Cfr. Göttler, *l. c.,* 118–120; Stintzing, *Populäre Literatur,* 510 ff.; v. Schulte, *l. c.,* 421; Dietterle in the *Zeitschrift f. Kirchengesch.,* XXV, 255.

[10] *Summa Confessorum,* l. III, tit. 34, qu. 91: *"Raymundus tamen § 62 pone quod aliquis, et Innocentius in Glossa super cap. Omnis, ponunt opinionem quorundam, quod quando ex confessione scis aliquid, ut ubi imminet aliquod futurum periculum, et tunc possit revelari talibus qui possent prodesse, non obesse. Sed haec opinio reprobatur a Thoma et Petro [a Tarentasia] et aliis theologis, ut praedictum est; nam confitentem nullo modo prodere licet ut in cap. Omnis."* (Ed. Lugdun., 1518, fol. 194 a).

[11] Cfr. Stintzing, *l. c.,* 516. V. Schulte (*l. c.,* II, 423) calls the *Summa* of Brother Berthold a very clear and excellent work; Dietterle, *l. c.,* XXVI, 1905, 67.

[12] Ed. Ulm, 1484 (Hain, 7371), fol. 32 b and 33.

The Dominican *Burchard of Strasbourg,* in his *"Summa Casuum"* (written toward the close of the 13th century),[13] expresses a similar opinion. The priest, he writes, must be very cautious not to reveal the confession made to him, neither in general nor in particular, neither by word nor by sign, neither intentionally nor through carelessness. In case he knows through sacramental confession that many murders or other crimes are planned, he must endeavor to thwart the designs, without, however, revealing the confession. For the rest he must keep silent, unless the penitent has given his consent.[14]

Somewhat later, *Albert of Brescia* (+ 1314), also a Dominican, wrote a *Summa,* which treats of the *iurisdictio pro foro interno* in three books.[15] His teaching is based almost exclusively on St. Thomas. In respect to the question under discussion he remarks: When a priest in confession discovers a heretic whom he cannot persuade to desist from perverting others, or if through confession he knows of a matrimonial impediment existing between two per-

[13] Cfr. v. Schulte, *l. c.,* II, 423 ff.; Dietterle, *l. c.,* XXV, 1904, 268.

[14] *"Debet autem valde cautus esse sacerdos, ne in genere vel in specie verbo vel nutu vel quacumque arte vel incuria detegat confessionem sibi factam. Sed tamen, si ex confessione scit multa homicidia vel alia mala patrata, debet occurrere sine proditione confessionis; alias tacebit, nisi in quantum consensit confessus."* (Clm. 7810 [*a.* 1320], tit. 117, fol. 69).

[15] Cfr. v. Schulte, *l. c.,* II, 424; Dietterle, *l. c.,* XXVI, 1905, 63 ff.

sons who intend to get married, he must not reveal what he has heard.[16]

It is quite natural that the teaching of St. Thomas was held in high esteem by the members of his Order. However, the representatives of other schools essentially agree with St. Thomas on the question of the Seal. *St. Bonaventure* (about 1248–53),[17] puts the matter clearly when he writes: Some distinguish by saying that a person may confess to the priest in a twofold manner: either with a contrite heart and intending to receive absolution, in which case all that he says falls under the Seal; or without a firm will to avoid sin, saying, *e. g.,* that he has the intention of committing perjury, murder or a similar crime; in this latter case the priest would not be bound by the Seal, but might reveal the confession to him of whom the penitent need not fear any

[16] *Summa Casuum,* Part III, c. 1: *"Illud quod sub confessione scitur est quasi nescitum, cum sacerdos illud peccatum, quod audivit in confessione, non sciat ut homo, sed ut dei minister. Si aliquis sacerdos in confessione scit aliquem hereticum, quem non potest inducere ut desistat de seductione hominum, aut scit in confessione affinitatem esse inter aliquos, qui volunt contrahere matrimonium, non debet revelare id quod in confessione audivit."* (Clm. 18407 (*saec. XV*), fol. 142^{v}b, 143 a).

[17] **Cfr. Rütten,** *l. c.,* 59 ff.; Schmoll, *l. c.,* 150 ff. Concerning the time when the Commentary on the Sentences was written, see *Opera Omnia* I, lv; X, 2. 42; N. Paulus, *Gesch. d. Ablasses,* I, 271 f.

injury, but who can be useful to him. This view, continues St. Bonaventure, appears to be justified; yet since the law is of general tenor and the penitent does not confess his sins to the priest as a man, but as the representative of God, the confessor, unless he has knowledge derived from some other source, must in no wise expose the penitent, because the Seal must be carefully guarded on account of scandal and the danger of deterring the penitent from confession.[18]

In a similar manner *Richard of Middletown* (after 1281) [19] answers the question, whether a confessor may ever reveal what he has heard in confession. He writes: "In no case is the priest allowed to reveal a confession, no matter whether the penitent repents of his sins or not, whether he accuses himself of a past sin or one to be committed at some future time, whether it be a sin against good morals or against the faith. Therefore, we must reject the view expressed in the verse: *'Est haeresis*

[18] *Comment in Sent.*, IV, d. 21, pars II, art. 2, qu. 1, concl. (*Opp. Omn.*, IV, ed. Quaracchi, 1889, 566).

[19] Cfr. Jeiler in the *Kirchenlexikon*, X² (1897), 1180. Edgar Hocedez, *Richard de Middleton, sa Vie, ses Œuvres, sa Doctrine* (Louvain, 1925), p. 55, places the completion of the commentary after 1294, but before 1298. The question is whether the passage on which he relies, does not contain a later correction of Richard's text. Jos. Lechner (*Die Sakramentenlehre des Richard v. Mediavilla*, München, 1925, p. 12) does not mention the difficulty.

crimen, quod nec confessio celet.' " The reason given by Richard is that otherwise people would be deterred from confession.[20]

John Duns Scotus (+ 1308) agrees with this opinion and says of the verse quoted: *"Quare reprobandus est ille versus iuristarum: Est haeresis crimen, quod nec confessio celat, non quin metrum sit bonum, sed sententia est falsa."* [21]

The passage quoted from Richard of Middletown gained great practical significance when the Minorite *Astesanus* received it into his celebrated penitential *Summa* (1317).[22]

In emphasizing the strict and universal obligation of the Seal of Confession the above-mentioned theologians base their arguments mostly on the teaching of St. Thomas, according to which every confession made to a priest with the expectation of forgiveness, is a sacramental confession, even though there be no contrition and no purpose of amendment. But how can such an intention be reconciled with the determination to continue in sin? This was a real dif-

[20] *Comment. in Sent.*, IV, d. 21, art. 4, qu. 2, concl.: *"In nullo casu licet sacerdoti revelare confessionem, sive confitens peniteat sive non: sive confiteatur peccatum iam opere perpetratum sive perpetrandum: sive sit peccatum in moribus sive in fide."* (Ed. Brixiae, IV, 1656, 341).

[21] *Comment. in Sent.*, IV, d. 21, qu. 2 (*Opp. Omn.*, XVIII, Parisiis, 1894, 751).

[22] *Summa de Casibus*, l. V, tit. 20. Cfr. Stintzing, *l. c.*, 519 ff.; v. Schulte, *l. c.*, II, 425 ff.; Dietterle, *l. c.*, XXVI, 1905, 350 ff.

ficulty. In view of it some canonists maintained, as was shown above, that the priest may reveal an intended crime if the penitent obstinately persists in his purpose, but is bound to silence if the penitent in any way gives evidence of his good will, for in the former case the behavior of the penitent showed that a sacramental confession is out of the question, whereas in the latter case it was not so. *Durandus of St. Pourçain* (+ 1334) [23] does not agree with this assumption. No matter how impenitent the sinner may be, he says, the priest is bound to keep the Seal as long as the penitent's conduct does not prove that he came with an entirely different intention than to submit himself to the tribunal of Penance. This would be the case, *e. g.*, if a heretic who neither believed in the Sacrament of Penance nor had the intention of submitting to the power of the keys, confessed his heresy merely to irritate and provoke the priest and declared his intention of doing everything in his power to seduce others. There would be no Sacrament in this case, and consequently no obligation of sacramental silence for the priest.[24] Durandus

[23] Concerning Durandus and his attitude towards the teaching of St. Thomas, cfr. Göttler, *l. c.*, 138 ff. The Commentary on the Sentences, written some time before, Durandus edited anew after 1321; cfr. N. Paulus, *Gesch. d. Ablasses,* I, 336.

[24] *Comment. in Sent.,* IV, d. 21, qu. 4: ". . . *Quum sacerdos obligetur ad celandam confessionem ex natura sacramenti, patet quod ex hoc obligatur quantumcumque suscipiens sit impenitens vel fictus, loquendo de fictione respectu effectus sacra-*

states this view as probable;[25] it is different, however, he says, if the penitent is in doubt regarding his error when he accuses himself to the priest; but even suppose that, despite the admonition of the priest, he obstinately remained in heresy, there would nevertheless be a sacramental confession involving the obligation of the Seal.

This distinction of Durandus was at bottom nothing new, but merely emphasized more strongly what St. Thomas had taught by his definition of sacramental confession. However, it required a long time before the rule laid down by Durandus was universally accepted. Most of the advocates of the stricter view contented themselves with extending the obligation of the Seal to the *peccata committenda* without stating the precise reason for this extension. Thus we read in the *Speculum Manuale* of *Herman*

menti; quia si aliquis esset fictus respectu susceptionis sacramenti, tunc nullum est sacramentum . . . et in isto casu sacerdos non teneretur ex vi sacramenti celare quod esset sibi secrete dictum, v. gr. hereticus impenitens et proponens alios corrumpere, nec credens sacramentum confessionis seu penitentiae aliquid valere, nec intendens se subicere sacerdoti pro absolutione, nec pro consilio, nec facere aliquid quod fideles ecclesiae faciunt aut quod intendit ecclesia, sed volens provocare et irritare sacerdotem, dicit ei se esse hereticum et velle corrumpere populum pro posse suo, in tali casu nullum est sacramentum nec ex virtute sacramenti peccatum sic dictum sacerdoti est celandum." (Ed. Paris, 1508, fol. 404^{v} b).

[25] *"Hoc habeatur tamquam probabiliter dictum absque alia assertione"* (*l. c.*).

of Schildesch (+ 1357):[26] If some one confesses that he intends to commit a great sin, say, to set fire to a city or betray it to an heretical or pagan enemy, the priest must in no wise betray him, no matter what calamity may ensue. He must, however, prevent the crime in so far as this can be done without betraying the penitent.[27] *Bartholomew of Pisa* (+ 1347) [28] says in his penitential *Summa* (1338): Whenever any danger threatens and the priest knows of it only through confession, *e. g.*, of a heretic who perverts the people, or of an unlawful marriage, or of a great material damage, he is not on that account allowed to reveal the confession, but must exhort the penitent to desist from his design or warn the bishop to watch over his flock, or in some such manner, without, however, revealing the confession.[29] On account of its excellence the *Summa*

[26] Cfr. v. Schulte, *Geschichte,* II, 431; Hurter, *Nomenclator,* II³, 662.

[27] *"Si aliquis confitetur quod velit magnum peccatum committere, puta quod velit civitatem comburere vel tradere hostibus hereticis vel paganis, sacerdos nullo modo debet eum prodere quodcumque malum eveniat; peccatum tamen impedire debet quantum potest sine proditione confitentis."* (Clm. 2956 [*saec. XIV*], fol. 160).

[28] Cfr. Stintzing, *l. c.,* 524; v. Schulte, *l. c.,* 428; Dietterle, *l. c.,* XXVII, 1906, 166 ff.; E. Göller, *Die päpstl. Pönitentiarie,* I, 1 (Rome, 1907), 62 ff.

[29] *Ad verb. Confessionis Celatio: "Si aliquod periculum futurum immineret et hoc sciretur solum per confessionem, ut de heretico qui corrumperet fideles, vel de matrimonio illicito*

of Bartholomew was subsequently (1444) revised by the Franciscan *Nicholas of Osimo* and re-edited under the title *Supplementum Fratris Nicolai ab Ausmo.*[30] In this new edition the same view regarding future sins is repeated, but Nicholas adds: What has been said applies only to a genuine, not to a fictitious confession. For, if anyone would go to confession with the intention of committing a crime and obtaining the advice and assistance of the confessor, such a communication would not fall under the Seal, because in such a case there would be no sacramental confession, but merely an abuse of it. In this sense Nicholas of Osimo also interprets Raymond of Peñaforte and Innocent IV when they exempt future sins from the Seal of Confession.[31] *Guy of Mont-*

quod aliquis velit facere, vel aliquo damno temporali, non propter hoc revelare debet, sed potius eos qui confitentur movere ut evitent, vel prelato dicere ut vigilet super gregem et huiusmodi sine ulla revelatione." (Ed. *s. l.*, 1475, [Hain, 2538], fol. 27ᵛ b, 28 a, collated with Clm. 3799 (*saec. XIV*), fol. 35). —This opinion is shared by Henry of Odendorp (+ 1400) in his *Lectura Decretalis: "Omnis utriusque sexus,"* where he says: "*Confessio ut sic est sacramentalis, licet ex parte confitentis sit defectus ut non operetur suum effectum . . . quantum ad propositum confitentis peccatum est iam commissum.*" (Ed. Memingae, 1490, fol. 109 a). Cfr. v. Schulte, *l. c.*, II, 434.

[30] Cfr. Stintzing, *l. c.*, 526 ff.; v. Schulte, *l. c.*, II, 435 ff.; Dietterle, *l. c.*, XXVII (1906), 183 ff.

[31] *Ad verb. Confessionis Celatio: ". . . Hec intelligenda sunt quando quis confiteretur vere; secus si ficte, ut operetur malum aliquod, vel ut a confessore impetret auxilium vel consilium super aliquo peccato; hoc enim non potest dici fore auditum in*

rocher (Guido de Monte Rocherii), who wrote about 1333, is of a different opinion. In his *Manipulus Curatorum,* which, like the *Summa* of Bartholomew of Pisa, enjoyed an extraordinary circulation during the 14th and 15th centuries,[32] he directly opposes Raymond's view that no priest is bound to keep the Seal in respect to an impenitent heretic. The principle: *"Fidem son servat, ergo fides ei non est servanda,"* he says, cannot be applied in this case, because in the matter of the Seal the point at issue is not so much loyalty to man as loyalty to God.[33]

The great *Gerson* (+ 1429) touches upon the Seal in his *Regulae Morales.* He asks the question, whether a confession may be revealed in order to avert a serious temporal or spiritual injury from the penitent, from the confessor, from a third person, or from an entire community, at least in a case where the confessor declares to the penitent that he will not accept the communication under the Seal of Confession. Gerson replies: In no case, not even to save an entire nation, is it permitted to reveal the confession, for the simple reason that it is not al-

confessione, cum hoc non sit confessio, sed confessionis destructio." (Ed. Venet., 1489, fol. 42ᵛ b).

[32] Cfr. v. Schulte, *l. c.,* II, 429 ff. The *Manipulus* was printed no less than 56 times in the 15th century. Cfr. Hurter, *Nomenclator,* II³, 612.

[33] Pars II, tract. III, c. 11, *De Sigillo Confessionis* (ed. Antverp., 1558, fol. 174).

lowed to do evil in order that good may result from it. The declaration of the confessor, if made after the avowal of the penitent, does not alter the case. It is different, however, if he tells the penitent at the outset that he will not keep the communication secret under the Seal of Confession. In this case there would be no sacramental confession.[34]

This agrees with what is said in a 15th century tract contained in manuscript form in the Codex Lat. 2834 of the Munich Royal and State Library.[35] The author at the very outset lays it down as an incontrovertible principle that the confessor must never under any circumstances reveal a sin which he knows only through confession.

That the author of this book by sacramental confession comprises also one in which the penitent obstinately insists on carrying out his sinful design, is obvious from the examples he quotes. Thus he says that a priest is not permitted to betray his penitent

[34] *"Questiones quedam cum suis responsionibus: Respondetur quod nullo modo, etiam pro salvando uno regno, licitum est confessionem revelare, quia non sunt facienda mala etc. Nec sufficit dicere post auditionem confessionis quod confessor non capit in confessione ex quo iam audivit. Secus si a principio diceret sic: noli mihi confiteri, quia nolo tenere secretum illud quod dixeris. Et tunc iam non esset confessio sacramentalis."* (*Opp. Omn., s. l.*, I (1489), fol. 34^{v}a).

[35] Whether John of Auerbach is the author of the tract that goes by his name in this collection, I am unable to say. It is not to be found in the printed writings of John of Auerbach. Cfr. v. Schulte, *l. c.*, II, 447; Hurter, *Nomenclator*, II^{3}, 1588.

even though he could foresee that the latter would infect and jeopardize the entire Church by his error or schism. Only a general warning, directed to the ministers of the Church, would be allowed.[36]

Gabriel Biel (+ 1495), known as "the last of the Schoolmen," supports the same principle in his Commentary on the Sentences of Peter Lombard. If it is admitted, he says, that past sins confessed without sorrow are objects of sacramental silence, then future sins must also be such, because volitionally they already belong to the past.[37] But not every confession must be comprehended in this statement according to Biel. Whenever the intention of ob-

[36] *Tractatus de Secreto seu Sigillo Confessionis: "Absolute et simpliciter et sine vaccilatione est tenendum, quod peccatum praecise et tantum in confessione sacramentali perceptum, de quo ante aut post confessionem aliunde nihil scivit pro totius mundi periculo tollendo non est manifestandum.—Ponatur casus quod heresis aut schisma aut error aliquis surgat in ecclesia, qui videtur destruere totam ecclesiam, et veniat seminator talium ad sacerdotem et confiteatur illud et quod non vult desistere, sed heresim aut schisma aut errorem illum augere, ex quo confessor cognovit seminatorem talium loco Dei in confessione non debet eum prodere, data etiam quod tota mater ecclesia per eum esset corrumpenda. Posset tamen confessor dicere prelatis ecclesie quod diligentius vigilent circa gregem sibi commissum, cavendo tamen omnino de expressione seminatoris."* (Clm. 2834, *saec. XV,* fol. 78).

[37] *Comment. in Sent.,* IV, d. 21, art. 3: *". . . Preterea hoc propositum velle in futurum peccare, est peccatum actuale et presens etiam si nunquam sequeretur effectus, et per consequens revelans revelaret peccatum preteritum quod clauditur sub sigillo confessionis."* (Ed. Lugd., 1514, *sine pag.*)

taining forgiveness is wanting, *e. g.,* if the self-accusation is simulated, there can be no question of sacramental confession, nor consequently of the Seal.

In the year 1504 *Thomas de Vio,*[38] commonly called *Cajetan,* wrote a special treatise on the question: *"Num confessor teneatur occultam servare deliberationem confitentis se omnino occisurum regem aut Pontificem summum?"* According to his own statement he wrote at the instigation of a Cardinal and prompted by the view of Panormitanus on this subject. Panormitanus, basing on Innocent, claimed that the confessor in the quoted case is not obliged to keep the Seal of Confession, for three reasons. First because only what the penitent communicates to the priest *qua* penitent can be said to fall under the Seal. But a penitent cannot, *qua* penitent, communicate to a confessor his firm determination to kill somebody, because there is a contradiction between the two intentions. The Seal furthermore extends only to those sins which the penitent communicates to the confessor as *materia absolutionis.* But this also is a contradiction, namely, to will to remain in sin and at the same time to ask to be absolved from it. Finally, the office of confessor has nothing to do with a disposition of this sort, hence neither has the Seal.

Cajetan rejects the above-quoted arguments as

[38] Cfr. Hurter, *Nomenclator,* II[3], 1205; Göttler, *l. c.,* 236 f.; *Dict. de Théol. Cath.,* II, 1313–29.

untenable. To form a correct judgment of the penitent, he says, the confessor must necessarily know not only the *materia absolutionis,* but also the impediments standing in the way of absolution. From this point of view the obstinacy of the penitent falls under the head of *"iudicium paenitentiale"* and thus also under the Seal. Panormitanus is wrong, he says, in appealing to Innocent IV, because the latter distinguishes between sacramental and non-sacramental confession, between an accusation made from conscientious motives and confession made for some other purpose. In the first case, according to Innocent, the obligation of the Seal applies, whereas in the second case it does not. When, therefore, concludes Cajetan, Angelus of Chiavasso (whose *Summa* was widely used in those days) adopted the view of Panormitanus, he simply did not know what he was doing; he (Cajetan) considered it his duty to warn confessors against such a practice.[39]

Hadrian of Utrecht, who in 1522 ascended the papal throne as Hadrian VI, goes deeper into the difficulties presented by our question.[40] It is objected against the unrestricted obligation of the Seal, he says, that there is no sacramental confession when

[39] *Opuscula, Tract.* 21; *Opp. Omn.,* I, Antverpiae, 1612, fol. 81.

[40] Cfr. Hurter, *l. c.,* 1218; L. Pastor, *Geschichte der Päpste,* IV, 2 (Freiburg, 1907) 28; P. Kalkhoff, *Kleine Beiträge zur Geschichte Hadr. VI.* in the *Histor. Jahrbuch,* XXXIX (1919), 31–72.

one accuses himself of harboring the intention to commit a crime. The sacramental character belongs only to such a confession as, together with the absolution, constitutes, or at least could constitute, the Sacrament of Penance. In the present case this is not possible, and therefore the priest is not bound to keep the Seal. This reasoning, writes Hadrian, seems to have induced Innocent IV and Panormitanus as well as other celebrated theologians to adopt the opinion that future sins do not come under the Seal of Confession. Hadrian tries to refute this objection as follows: As long as the penitent persists in his purpose, he can not receive pardon; but if he repents of his evil intention later, he may be absolved without a new confession. Any accusation, however, which results in obtaining forgiveness is a sacramental confession.[41]

Dominic de Soto (+ 1560) [42] also rejects the view of Panormitanus, together with the latter's appeal to Pope Innocent IV. In doing so he evidently leans on Cajetan, whom he also cites. De Soto lays down the proposition: *"Omne peccatum detectum in con-*

[41] *Quaestiones in IV L. Sent., De Sacramento Confessionis* (ed. Paris., 1528, fol. 93 b sq.). Cfr. Kurtscheid, *De Obligatione Sigilli Confessionis iuxta Doctrinam Hadriani VI* (Antonianum, I [Romae, 1925], 84–101, where the untenable assertions of L. Honoré (*Le Secret de la Confession,* p. 66 f.) concerning the teaching of Hadrian are refuted.

[42] Cfr. Hurter, *Nomenclator,* II[3], 1375 f.; Göttler, *l. c.,* 267 ff.

fessione clauditur sub sigillo, sive praesens, sive futurum, sive qui confitetur vere paeniteat sive non." [43] By sacramental confession he means an avowal made with the intention of accusing oneself before God.[44] De Soto does not stop at this general rule, but endeavors to solve the difficulty of how the intention of making a sacramental confession can coexist with the will to commit a crime. It is quite possible, he writes, that somebody comes to confession with the intention of perpetrating a crime which he believes not to be a sin, *e. g.*, to engage in a duel or to assassinate a notorious tyrant, believing himself justified in doing this on his own authority. Now, if such a penitent, after being instructed by the confessor on the sinfulness of his proposal, persists in his purpose and is refused absolution, the Seal must nevertheless be kept, because the confession was a sacramental one, as may be seen from the fact that in case the penitent would repent of his intention, he could be absolved without repeating his confession.

If, on the other hand, a man comes to confession with the intention of seducing the confessor, by drawing him into heresy or into a conspiracy or

[43] *Relectio de Ratione Tegendi et Detegendi Secretum,* membr. III, qu. 4, concl. 2, Venet., 1590, 335.

[44] *Comment. in Sent.,* l. IV, d. 18, qu. 4, art. 5, concl. 5: *"Nunquam occurrit vinculum sacri sigilli confessionis, nisi ubi confessio est sacramentalis, quae sc. fit intentione faciendi accusationem coram Deo."* (Ed. Lovan., 1573, 513 b).

into some other crime, he evidently has not the intention of confessing his sins, and measures should immediately be taken lest he contaminate others.[45] In proof thereof de Soto cites a case in which a certain Cardinal made use of the confessional to interest another in a conspiracy against the Pope.[46] Later the scheme was discovered and the confessor severely reprimanded because he had not reported what he had heard in the confessional. His appeal to the Seal was declared inadmissible, for the reason that no

[45] *L. c.*, 514 b: "*. . . si constaret eum qui confitetur sacramentaliter confiteri per modum accusationis coram Deo, quamvis aliud sinistrum haberet propositum annexum etiam mortale, quod, ut supra diximus, faceret confessionem non esse validam, esset nihilominus sub sigillo confessionis confessio servanda. Est enim possibile, quod quis ad confessionem accedat cum proposito patrandi aliquod malum, quod putat non esse peccatum: puta congrediendi cum aliquo in duello, vel occidendi manifestarium tyrannum, quem putat sibi licere privata auctoritate interficere. Tunc enim, quamvis ammonitione confessarii intelligens id esse peccatum nolit a proposito desistere et ideo absque absolutione recedat, nihilominus in tali casu sigillum confessionis servandum est: quia talis confessio est sacramentalis, quandoquidem per solam mutationem propositi absque alia confessione esset ille absolvendus. Verumtamen quando quis ad confessionem propositum affert pervertendi confessarium in haeresim sc. vel in conspirationem vel aliud malum eum attrahendi, non est ille censendus intentionem habere confitendi et ideo illico puniendus est, ne alios sua contagione contaminet.*"

[46] *L. c.* I could not determine which conspiracy is meant here.

sacramental confession had taken place in this case.

Martin Azpilcueta (*Navarrus*) (+1586),[47] one of the best canonists of the 16th century, agrees in the main with Dominic de Soto. In his detailed commentary on the *Caput Sacerdos,* he, like Cajetan, defends Innocent IV against the charge of taking too liberal a view, and together with St. Thomas, Scotus, Paludanus, and "nearly all the commentators on *Caput Omnis,*" adheres firmly to the opinion that a confession of sins carries with it the obligation of the Seal, even when made without sorrow. Though such a confession merits no absolution, he says, it is nevertheless a sacramental confession and therefore falls under the Seal. His main reason is the same as that given by Soto, namely, that the penitent, if he sooner or later repents of his sin after such a confession, may be absolved without a new confession.[48]

The clearest writer on our question is *Reginald.*[49] In harmony with the rest of the theologians he proceeds from the principle that the sole basis of the Seal is sacramental confession, which is present whenever the penitent has the intention of accusing himself and submits his sins to the power of the

[47] Cfr. v. Schulte, *Geschichte,* III, 715 ff.

[48] *Comment. in VII Distinct. de Paenit., cap. Sacerdos,* n. 120–121; *Opp. Omn.,* Venetiis, 1601, fol. 350 b.

[49] Cfr. Hurter, *Nomenclator,* III^3, 895.

keys. It is not enough to simulate sacramental confession by kneeling down and reciting the Confiteor, when as a matter of fact one has merely the intention of asking the confessor's advice or confiding to him something which one desires to be kept secret. On the other hand, sacramental confession does not require the will to receive absolution by this present confession, but it suffices that the penitent has the intention of accusing himself before the priest, in order that he, as the representative of Christ, may judge him and deal with him according to his discretion. Where this condition is verified, the self-accusation is directed, at least conditionally, towards the absolution, and hence is sacramental.[50] The apparent contradiction between the intention of accusing oneself and the obstinate will of sinning, Reginald endeavors to solve, like de Soto, by the *bona* or *dubia fides* of the penitent.[51] If, however, the behavior of the latter shows that he has not the intention of accusing himself, but means to cause serious trouble to the confessor or seduce him to sin, then there is no obligation of the Seal, because there is no sacramental confession.[52]

The above view is shared by most canonists and

[50] *Praxis Fori Paenitentialis ad Directionem Confessarii*, l. III, c. 1, n. 5 f. (Lugduni, 1616, 148 b sq.).

[51] L. III, c. 2, n. 13, 14 (*l. c.*, 150 b).

[52] L. III, c. 5, n. 66 (*l. c.*, 161 b).

theologians after the close of the 16th century, notably Gr. Sayrus (+ 1602),[53] Gabriel Vasquez (+ 1604),[54] H. Onufrius (+ 1611),[55] Estius (+ 1613) [56] Francis Suarez (+ 1617),[57] Paul Laymann (+ 1625),[58] Mart. Bonacina (+ 1631),[59] Ad. Tanner (+ 1632),[60] Ferd. Castropalao (+ 1633),[61] Francis Sylvius (+ 1649),[62] John de Lugo (+ 1660),[63] George Gobat (+ 1679),[64] Anacletus Reiffenstuel (+ 1703),[65] Francis Xavier

[53] *Clavis Regia Casuum Conscientiae,* l. 12, c. 16, n. 15 (Monast. Guestfal., 1628, 965).

[54] *In III. Partem S. Thom.,* qu. 93, art. 4, dub. 3, n. 6–7 (*Opp. Omn.,* IV [Antverp., 1621], 294).

[55] *De Sacro Sigillo Opusculum,* sect. IV, qu. VI (Mediolani, 1611, 267, 268).

[56] *In Sent.,* IV, d. 17, § 14 (*Comment. in Sent.,* IV [Paris, 1662], 234).

[57] *De Sacram. Paenit.,* disp. 33, sect. 3, n. 2 (*Opp. Omn.,* XXII [Paris, 1866], 691).

[58] *Theol. Moral.,* tract. 6, c. 14, n. 5 (Mogunt., 1654, 400).

[59] *De Sacram. Paenit.,* disp. 5, qu. 6, punct. 2, 3 (*Summa Moral.,* I [Antverp., 1643], 148).

[60] *Theol. Scholast.,* tom. IV, disp. 6, qu. 9, dub. 6, n. 138 (Ingolstadii, 1627, 1748).

[61] *Summa Moral.,* pars IV, tract. 23, punct. 19, § 2 (Lugd., 1669, II, 168).

[62] *In III Part. S. Thomae,* qu. 9 (*Opp. Omn.,* IV [Antverp., 1714], 529).

[63] *De Sacram. Paenit.,* disp. 23, sect. 3, n. 53 (*Opp. Omn.,* V [Parisiis, 1893], 371).

[64] *Alphabet. Confessarior.,* c. 22, n. 9, 790 (*Opp. Moral.,* I [Monachii, 1683], 680 834).

[65] *Ius Can.,* l. V, tit. 38, n. 2 (ed. Antverp., 1743, V, 383).

Schmalzgrueber (+ 1735),[66] Pope Benedict XIV (+ 1758),[67] B. Billuart (+ 1757),[68] Lucius Ferraris (+ 1770),[69] A. Tappehorn,[70] Ballerini-Palmieri,[71] Aug. Lehmkuhl,[72] and Antony Koch.[73] Thus the question was decided in principle, although in individual cases it may at times be difficult to discover the mind of the penitent. Here the rule applies: Whenever the intention of the penitent is doubtful, the presumption is in favor of the Seal.[74]

§ 2. USE OF THE KNOWLEDGE OBTAINED IN CONFESSION

A. The Teaching of the Majority of Canonists and Theologians up to Clement VIII

The chief difficulty which engaged the attention of canonists and theologians after the Fourth Coun-

[66] *Ius Can.*, l. V, tit. 38, n. 66 (Neapoli, 1738, V, 337).

[67] *Instit. Iur. Can.*, 45, n. 10 (Romae, 1747, 232).

[68] *De Sacramento Paenit.*, diss. VIII, art. 1 (*Summa S. Thom.*, VII [Parisiis, 1872], 209).

[69] *Verb. Sigill. Sacramental. Confess.*, n. 31 (*Bibliotheca*, VII [Romae, 1891], 199).

[70] *Anleitung zur Verwaltung des Buszsakramentes*[4] (Dülmen, 1893), 223.

[71] *Opus Theol. Morale*, V[3] (Prati, 1900), n. 642 ff.

[72] *Theol. Moral.*, II[11] (Friburgi, 1910), n. 590.

[73] *Lehrbuch der Moraltheologie*[2] (Freiburg, 1907), 207 f.; *Handbook of Moral Theology*, English ed. by A. Preuss, Vol. II, 113, 167 ff.; Vol. V, 415.

[74] Liguori, *Theol. Mor.*, l. VI, tract. 4, n. 637 (ed. Gaudé, III [Romae, 1909], 658).

cil of the Lateran was this: How can the obligation of the Seal be reconciled with the precept of charity, which enjoins that we should shield our neighbor against temporal and spiritual injury to the best of our ability?

We have seen how this question was answered by canonists and theologians. The majority of them denied that direct revelation was permissible. Those who affirmed it, did so more from an erroneous conception of sacramental confession than from any intention of establishing an actual exception to the Seal.

The case is different, however, in regard to the question, to what extent the confessor may make use of the knowledge he has obtained in confession. This question stands in intimate relation to the foregoing one, nay, coincides with it, if the use made of the knowledge obtained in confession is such that the sin of the penitent may become known through it. When the danger of such an indirect revelation of confession is precluded, the knowledge obtained through the Sacrament may be made use of in a twofold manner: Either I perform or omit actions that involve a disadvantage or a hardship for the penitent; or I use the knowledge obtained for performing actions which can only be welcome to the penitent or at least are indifferent to him. Let us see what attitude the canonists and theologians assumed in regard to this question.

The Fourth Lateran Council precludes the use of knowledge involving an indirect revelation of confession by forbidding the betrayal of the penitent, not only in words, but also by signs or any other means.[1] On this point canonists and theologians nearly all agree.

Neither is there any difficulty with regard to the third manner of using the knowledge obtained through confession. For it is taken for granted that the identity of the penitent is in no wise made known, and that the confessor uses his knowledge only for actions which are agreeable to the penitent or at least not injurious to him. Such a use is in no way opposed to the purpose of the Sacrament of Penance and is, therefore, considered lawful by all theologians.

Let us now turn our attention to the second question, namely, whether the priest may ever use knowledge derived from confession to the detriment of his penitent.

Eugene III had strictly enjoined ecclesiastical judges not to utilize the knowledge obtained in sacramental confession for a judgment against the accused,[2] for the reason that *"non ut iudex scit, sed ut Deus."* St. Thomas Aquinas developed this idea. The Seal of Confession, he writes, is not opposed to

[1] *"Caveat ne verbo aut signo aut alio quovis modo . . . prodat peccatorem."* (c. 12, X, V, 38).

[2] C. 2, X (I, 31).

the precept of charity, because charity does not require us to hinder sins which are beyond human knowledge. But whatever the priest knows through confession he, in a sense, does not know, because he possesses this knowledge not as man, but as the representative of God. He may, therefore, without qualms of conscience, swear to his ignorance in court, because the obligation of a witness extends only to his human knowledge. Similarly a superior may let a transgression of a subordinate go unpunished if he knows of it solely through confession.[3]

But St. Thomas wants this rule applied only to those cases in which the action of the priest involves a revelation of confession, or at any rate is apt to arouse well-founded suspicion, for he expressly says that the priest, to prevent an impending calamity, must use preventative measures in as far as he can do so without revealing the confession.[4] Thus, according to him, a superior may opportunely re-

[3] *Comm. in Sent.*, IV, d. 21, qu. 3, art. 1, sol. 1: *"Nec tamen sigillum confessionis contra caritatem militat, quia caritas non requirit ut apponatur remedium peccato quod homo nesciat; illud autem quod sub confessione scitur, est quasi nescitum, cum non sciat ut homo, sed ut Deus . . . homo non adducitur in testimonium nisi est homo; et ideo absque laesione conscientiae potest iurare se nescire quod scit tantum ut Deus. . . . Similiter absque laesione conscientiae potest praelatus impunitum dimittere peccatum, quod scit ut Deus."* (*Opp. Omn.*, tom. X [Parisiis, 1889], 598).

[4] *"Tamen aliquod remedium adhibere debet in praedictis casibus quantum potest sine confessionis revelatione."* (*l. c.*)

move from office a subordinate, who will not voluntarily resign, if he knows through sacramental confession that the office is an occasion of sin to him; but this must be done so that no suspicion falls on sacramental confession.[5]

In another passage of his writings St. Thomas speaks still more plainly in treating in detail the question whether a prelate can remove his subordinate from office on the strength of knowledge obtained in confession. He answers: What was heard in confession must under no circumstances be revealed, neither by word, nor sign, nor hint; neither may anything be done which would cast suspicion upon the penitent. If, then, the removal of a subordinate from office would lead to a knowledge of the matter confessed, or arouse well-founded suspicion, the superior could not depose the penitent. This would be the case, *e. g.,* where, according to an ancient custom in monasteries, the prior cannot be removed from office except on account of an antecedent offence. In case, however, the removal would in no wise reveal the confessed sin, *e. g.,* where it is left to the discretion of the abbot to remove subordinates from office, he may depose his penitent under some other pretext, nay he *must* do so, with the necessary precautions, if the further administra-

[5] *"Potest* [*sc. abbas priorem suum, nisi admonitus resignat*] *ex alia occasione absolvere a cura prioratus, ita tamen, quod omnis suspicio vitetur de confessionis violatione."* (*l. c.*).

tion of the office would be a source of danger to the subordinate. A better policy, of course, would be to induce the penitent to resign his office voluntarily.[6]

In a similar manner a member of a religious community entitled to vote at an election of superiors may, according to St. Thomas, not give his vote to one whose unworthiness is known to him through confession. The reason is because on such occasions other reasons may easily be found for refusing to vote for a candidate, so that suspicion regarding confessed sins is quite remote.[7] In this question, as

[6] *Quodlib.*, V, art. 13: ". . . *Si amotio subditi ab administratione possit inducere ad manifestandum peccatum in confessione auditum vel aliquem probabilem suspicionem habendam de ipso, nullo modo praelatus deberet subditum ab administratione removere. . . . Si vero per amotionem ab administratione peccatum nullatenus manifestaretur, puta si in aliquo monasterio esset consuetum, quod abbas pro suo libito de facili aliquos ab administratione removeret, tunc alia occasione accepta posset subditum sibi confessum ab administratione removere, et deberet hoc facere, cum debita tamen cautela, si talis administratio esset subdito periculosa in posterum, quamvis etiam in hoc casu melius esset quod eum induceret ad cessionem petendam.*" (*Opp. Omn.*, tom. XV [1889], 470 ff). The first six *Quodlibetales* were written in the year 1258. Cfr. Buchberger, *Die Wirkungen des Buszsakramentes nach Thomas von Aquin* (München, 1901), 2.

[7] *Comment. in Sent.*, d. 21, qu. 3, art. 1, sol. 1: "*Ad quartum dicendum, quod ex multis aliis causis aliquis redditur indignus ad praelationis officium quam ex peccato, sicut ex defectu scientiae vel aetatis, vel alicuius huiusmodi, et ideo qui contradicit nec suspicionem de crimine facit, nec confessionem revelat.*" (*Opp. Omn.*, X [1889], 598).

in so many others, the doctrine of St. Thomas was followed by most later theologians. John of Freiburg [8] and Albert of Brescia,[9] for instance, quote him literally.

Henry of Ghent (+ 1293) [10] does not differ essentially from St. Thomas. He lays down the principle: *"Illud quod novit Abbas in confessione, non debet movere ipsum in negotiis agendis in quantum est homo . . . ea autem quae agit abbas in publico, agit in quantum est homo."* However, from his commentary on this passage it is clear that this rule applies only when scandal or suspicion might arise from a violation of the Seal of Confession. For even according to Henry it is the duty of the superior to remove the sinful occasion of which he has knowledge through confession: *"Et ideo in secreto potest habere intentionem illum amovendi propter salutem eius et illorum, sed in publico debet habere rationem et occasionem removendi ipsum absque scandalo et suspicione; quam si habere poterit ipsum debet deponere."* But if in the absence of other evidence scan-

[8] *Summa Confessorum,* l. III, tit. 34, qu. 94 (Lugd., 1518, fol. 194 a).

[9] *Summa Casuum,* l. III, c. 1 (Clm. 18407, fol. 143 a).

[10] Cfr. Ehrle in the *Archiv für Literatur- und Kirchengeschichte des Mittelalters,* I (1885), 365 ff.; E. Hocedez, *Richard de Middleton* (Louvain-Paris, 1925), p. 49 and 479; according to this author Henry of Ghent wrote his Quodl. VIII about the year 1284.

dal would arise or a suspicion that the superior had removed him from office on account of the sins confessed, this must under no circumstances be done, but the matter must be left to God.[11]

Richard of Middletown expresses himself more cautiously. He perceived, as we shall see later, the precariousness of such a doctrine, but in the end admits that if a superior can remove a subordinate from office without arousing suspicion either in the penitent or some other person, he is permitted, according to the *opinion of some theologians,* to remove him.[12]

Duns Scotus (+ 1308) rejects the Thomistic view that the priest, *qua* man, has no knowledge of what he has heard in confession, though as to the use he may make of this knowledge, he agrees with St. Thomas, nay, even goes farther than he. He concedes to the superior the right to remove his penitent from a dangerous office if this step requires no special canonical reason.[13] In another passage Scotus ex-

[11] *Henrici Gandavensis Quodlib.* VIII, qu. 29, ed. Venet., 1613, II, p. 51 f.

[12] *Comment. in Sent.,* IV, d. 21, art. 4, qu. 2: *"Si tamen posset superior illum ab officio removere absque hoc quod ille vel quicunque alius suspicari posset, ipsum pro his quae dixit in confessione ab illo officio esse remotum, esset licitum superiori, ut dicunt aliqui, ipsum ab officio removere."* (Ed. Brixiae, 1656, IV, 342).

[13] *Comment. in Sent.,* IV, d. 21, qu. 2, ad 6 (*Opp. Omn.,* XVIII [Paris, 1894], 760 ff).

presses the opinion that by the Seal of Confession only those actions are prohibited which by their *nature* point to the confessed sins, not, however, those which may have different causes, even if they, through any circumstance, assume a more specific signification for some persons.[14]

Astesanus regards this opinion as at least well-founded; for together with the passage from Richard of Middletown, he gave it a place in his celebrated *Summa.*[15]

According to *Peter de Palude* (+ 1342) [16] the obligation of the confessor extends no farther than keeping the confession secret. If any further obligation were admitted, it could at most be this, to provide for the salvation of the penitent. Hence if an abbot, through sacramental confession, has arrived at the conviction that his prior is not fit for this office, and it is left to his discretion to remove him, he may await a favorable opportunity to remove him without exciting suspicion. It would be different, however, if a canonical reason were required for the

[14] *Ibid.*, dist. 21, qu. 2 and 3: "*. . . generaliter igitur potest dici, quod signum, quod est de se indifferens ad hoc quod est tale peccatum esse confessum, vel non esse, licet sit aliquibus magis signum determinatum ex aliquo supposito, non est signum revelativum confessionis nec per consequens simpliciter illicitum confessori.*" (*l. c.*, 757).

[15] *Summa de Casibus,* l. V, tit. 20 (ed. Norimb., 1487 fol. 93^{v} a).

[16] Cfr. Göttler, *l. c.*, 153 ff.; Buchberger, *Krchl. Handlexikon,* II (Freiburg, 1912) 1444.

removal of the prior.[17] Similarly a voter, who is free to vote, may refuse to cast his ballot for one whom he hitherto considered worthy, but through confession discovered to be unworthy. For the free election of one worthy or unworthy, writes Peter, is a matter between God and the voter, and hence the latter may make use of the knowledge which he has gained as the representative of God. Still, he does not incur the canonical penalty if he votes solely according to his human knowledge.[18]

The theologians of the 14th and 15th centuries offer very little that is new in the development of the Seal, but for the most part merely repeat what the great Scholastics had taught. Thus *Bartholomew*

[17] *Commt. in Sent.*, IV, d. 21, qu. 3, art. 3, concl. 3: *"Quidquid ergo videtur confessori faciendum vel omittendum pro bono confitentis vel communi potest facere vel omittere, dum tamen per hoc non reveletur confessio, ad quod solum obligatur, licet alias non esset illud facturus. Si ergo per confessionem prioris vel alterius scit abbas, quod non expedit priori tenere monasterium et sit talis, qui ad libitum alias potest amoveri, expectet quousque sine nota revelationis possit amovere et tunc statim amoveat. Cum enim ex audientia confessionis ad nihil obligetur nisi ad celandum, et si obligaretur ad aliquid hoc esset ad medendum animae paenitentis, . . . sic in proposito quam cito potest amovere, amoveat quem sine hoc amovere poterat."* (Ed. Paris., 1514, fol. 116^{v}b).

[18] *"Similiter quia homo liberam electionem habet, licet per solam confessionem sciat aliquem indignum quem alias putabat dignum, debet non eligere ex conscientia sic dictante sibi, quia in eligendo scienter dignum vel indignum negotium geritur inter ipsum et Deum; unde potest ex his, quae etiam scit ut Deus, iudicare in proposito."* (*l. c.*, fol. 117 a).

of Pisa [19] and *Nicholas of Osimo* [20] closely follow St. Thomas, whilst *St. Antoninus* (+ 1459) copied the above-quoted passage from Peter de Palude literally into his *"Summa Theologica,"* [21] and *Bapt. de Salvis* followed Richard of Middletown.[22]

It must, however, be remarked that, like Richard of Middletown, de Salvis expressly emphasizes that the action of the superior must arouse no suspicion, either in others, or in the penitent himself.[23] The same reservation is made by *Angelus of Chiavasso.*

Other theologians favored a more liberal view. *William of Auxerre* (about 1230) [24] and *Alexander*

[19] *Summa Casuum, s. v. "Confessionis Celatio,"* n. 5 (ed. *s. l.*, 1475, fol. 28 a).

[20] *Supplementum s. v. "Confess. Celatio"* (ed. Venet., 1489, fol. 43^{v} b).

[21] *Summa,* pars III, tit. 17, c. 22, § 1. On the dependence of Antoninus on Peter de Palude see Göttler, *l. c.*, 206 ff.

[22] *Summa Rosella, s. v. "Confess. Celatio,"* n. 1 (ed. Venet., 1495, fol. 40 b).

[23] *"Si tamen superior posset eum ab officio removere sine hoc, quod ille vel quicumque alius suspicari posset eum pro his, quae dixit in confessione, ab illo officio remotum esse, liceret superiori, ut dicunt aliqui, ipsum ab officio removere."* (*Summa Rosella, l. c.;* Rich. of Middletown in his commentary on the Sentences, IV, d. 21, art. 4, qu. 2.)

[24] Cfr. Denifle-Chatelain, *Chartul. Univers. Paris.,* I (Paris., 1889), 145 f.—*Summa Aurea in Sent.,* IV, *de Sacrament. Paenit.: "Decanus, qui ex confessione scit aliquem ordinandum esse irregularem: Dicendum quod non debet eum representare, imo debet proicere crimen in communi dicendo: nullum presentabo hodie . . . si vero coarctaretur decanus a capitulo, ita*

of Hales (+ 1245) [25] had advised the confessor to assist, not personally but by a proxy, at an unlawful marriage which he could not prevent; in the same manner a dean should not personally present to his bishop for ordination a canon whom through confession he knows to be irregular, but should let his archdeacon present him, in order that by this action the guilty person may realize the magnitude of his sins and repent. Furthermore, according to Alexander of Hales [26] and the Council of Treves (1227) [27] the priest may refuse communion to an unworthy person if the latter asks for it in secret. They, consequently, did not consider themselves bound by the obligation of the Seal with regard to the penitent.

At the beginning of the 16th century *Sylvester*

ut non possit resistere quin presentet illum, non debet illum presentare per se, sed per alium, dando potestatem suam archidiacono vel alicui alii, ut ille, videns decanum adeo abominari peccatum suum, resiliat a proposito." (Ed. Paris., 1500, fol. 271 b).

[25] *Summa Theol.*, pars IV, qu. 19, membr. 2, art. 1, ad 5: "*Consilium est, ut faciat per vicarium, tum ut contrahens occulte confundatur, tum propter criminis horrorem, et ut illi horror incutiatur.*" (Ed. 1622, 599 b).

[26] *Summa Theol.*, pars IV, qu. 11, membr. 2: "*Si sacerdos novit aliquem esse in mortali per confessionem, debet eum monere in secreto, ne accedat ad mensam Domini; tali autem negare corpus Christi si petat in secreto.*" (*Ibid.*, 394 a).

[27] *Pars III, de Eucharistia*, c. 19: "*Nullus sacerdos propter occulta peccata mortalia, quae scit per confessionem debet negare corpus Domini alicui publice.*" (Mansi, XXIII, 28).— Cfr. *Statuta Richardi Poore, Episcop. Sarum*, c. 39: "*Prohibe-*

Prierias advocates the same view. In his *Summa* he expressly disagrees with Richard of Middletown, Baptist de Salvis, and Angelus of Chiavasso. He thinks it sufficient if others cannot conjecture anything from the action of the confessor, and quotes St. Thomas in favor of his opinion. The objection that the penitent might otherwise be induced to conceal sins of this kind he considers worthless, because it is better to prevent a sin than to be anxious about the concealment of those confessed.[28]

Hadrian of Utrecht (+ 1523) does not draw this distinction, but merely requires that the superior, when making use of his knowledge, take care that no suspicion arises against the penitent; if he can-

mus, . . . ne communio eucharistiae detur secreto impaenitenti, cum publice et instanter petenti danda sit: dummodo occultum fuerit eius delictum." (Mansi, XXII, 1120).

[28] *Summa, s. verb. "Confessio,"* III, n. 14: ". . . *Adde secundum mentem Richardi, quod oportet vitari suspicionem confessionis sic, quod nec ipse* [*sc. confitens*] *nec alius credat eum propter confessionem absolutum* [*sc. ab officio suo*] *aliter ipse vel alius redderetur pronior ad celanda peccata. Et hoc sequitur Summa Rosella et innuit Summa Angelica. Sed ego credo verum quoad alium, non autem quoad ipsum paenitentem: quia ut patet ex s. Thoma in V. quodlib., q. 10, quando praelatus sine manifestatione peccati potest eum amovere ab officio periculoso in posterum, hoc facere potest et debet. . . . Nec obstat, quod efficeretur pronior ad celanda peccata, quia melius est cavere ne peccata fiant, quam ne facta celentur.*" (Ed. Venet., 1572, 292 a).

not prevent revealing the confession by a word or an action, the use would be unlawful.[29]

The Council of Trent made no decision with regard to this question. A distinguished theologian of the Council, *Dominic de Soto,* soon after again advocated the teaching of St. Thomas. Above all he stresses the question whether or not, by using the knowledge obtained in confession, a positive right of the penitent is violated.[30] Thus a priest may refuse the sacraments to an unworthy applicant if he is not obliged for some other reason to administer them to him; a bishop, while he may not refuse ordination to a candidate standing at the altar, after the latter has received a certain right to ordination by the vote of the rest, may reject him beforehand under some pretext.[31] It is the same in regard to removal from office by a superior. If no canonical reason is required, the superior is bound to remove an unworthy incumbent under some pretext;[32] a voter must not cast his ballot for an unfit candi-

[29] *Quaestiones in Sent.,* l. IV, *de Sacram. Paenit.* (ed. Paris., 1528, fol. 95 a).

[30] *De Ratione Tegendi et Detegendi Secretum,* membr. III, qu. 4, dub. 1: *"Sacerdotes propter scientiam, quam habent in confessione, non possunt postmodum privare paenitentem eo, ad quod habet quodammodo ius acquisitum: sed tamen in gratuitis, ubi habent liberam potestatem, possunt eum privare et non admittere."* (Ed. Venet., 1590, 352 ff.).

[31] *L. c.,* 353.

[32] *L. c.,* 354.

date;[33] in like manner a novice-master, when admitting or rejecting a novice, must take into account the knowledge he has obtained through confession.[34]

De Soto does not overlook the objection that was raised against his teaching, namely, that such use made of the knowledge obtained through confession would deter people from receiving the Sacrament of Penance. The subordinates would be in constant dread of confession to their superiors or electors, in order not to be barred from office. This fear de Soto regards as groundless, because neither the priest nor the Sacrament is to be blamed on this account. The confessor does not wrong the penitent when he takes away from him, or does not give him something to which he has no claim; neither is there a revelation of confession.[35]

The celebrated moralist *Henry Henriquez*

[33] *L. c.*, 354 ff.

[34] *"Magister (quem vocant) novitiorum, potest negare illi suffragium ad professionem, quem per confessionem scit esse contagiosum et perniciosum domui."* (*L. c.*, 357).

[35] *"Quodsi quis arguat in favorem Henrici Gandaviensis, quod si liceret ex cognitione auditorum in confessione exterius agere cum paenitente: tunc timerent homines confiteri, et fieret sacramentum grave; formidarent enim subditi confiteri praelato et qui ut digni habentur magistratu confiteri electoribus. Respondetur quod qui ex hac causa formidarent confessionem, non haberent quid incusarent aut sacerdoti, aut sacramento: postquam confessor non admittens paenitentem ad id cuius non habet ius acquisitum, aut privans illum eo quod est in mera potestate eius auferre, nullam facit iniuriam nec confessionem revelat."* (*L. c.*, 357 ff.).

(+ 1608), the teacher of Suarez,[36] employs the same argument. He writes: If the penitent complains about the action of the confessor, as if he revealed the confession, no attention is to be paid to him, because the confessor merely makes use of his right, and he must be believed rather than the penitent. Henriquez is of the opinion that the praiseworthy custom, approved by the Popes, which existed in various religious orders, by which the superiors heard at least the annual confession of their subordinates, was introduced for the very purpose of enabling them to guide them better for their spiritual benefit and consolation. This, he says, is also the reason why formerly the bishops alone absolved from reserved cases, and only the pastors heard the Easter confessions.[37]

Navarrus (+ 1586) not only upholds the general doctrine of the canonists and theologians, but accentuates it by, *e. g.*, making the confessor liable to canonical punishment if he casts his ballot in an election for an unworthy candidate in spite of the knowledge obtained in confession.[38]

[36] Cfr. Hurter, *Nomenclator*, III [3], 591.

[37] *Summa Theol. Moralis*, l. III, *de Sacram. Paenit.*, c. 24, n. 8: *"Si forte paenitens aut complex conqueratur et insimulet confessarium de revelata confessione per huiusmodi facta: contemnendus est, quia iure suo utitur confessarius et ei magis credendum est quam paenitenti."* (Ed. Mogunt., 1613, 313; cfr. c. 19, 20, 23).

[38] *Comment. in VII distinct. de Paenit., cap. Sacerdos*, n. 148 (*Opp. Omn.*, I [Venet., 1601], 352 a).

The attitude of *Vasquez* (+ 1604) may be seen from his declaration that the use of knowledge obtained through confession is permitted even when the penitent is aware of the fact; the confessor is not bound to keep the Seal towards the penitent, but only to avoid all suspicion with regard to others.[39]

In this sense writes *Emmanuel Sa* (+ 1596) in his celebrated *Aphorismi Confessariorum:* Secretly to reprove a penitent afterwards in regard to what he has confessed, is unlawful, but not contrary to the Seal, nay, at times it may even be lawful, as is indicated in *Cap. Sacerdos de Officio Iud. Ord.*[40]

B. The Opponents of the Use of Knowledge Obtained in Confession and the Approbation of Their View by Clement VIII (1593)

Whilst nearly all canonists and theologians permitted the confessor to guide himself in his actions

[39] *Comment. in III. Part. S. Thomae,* qu. 93, art. 4, dub. 8, n. 6: *"Ergo est falsa, quod de paenitente addit [Rich. a Mediavilla], quia respectu illius non fit contra sigillum nec contra iustitiam, cum ille amoveri possit sine causa."* (Ed. Antverp., 1621, IV, 298).

[40] *Verb. confessor,* n. 21: *"Occulte corripere postea paenitentem de auditis ab eo in confessione, etsi est illicitum, sed non contra sigillum confessionis; . . . quamquam licere interdum indicat cap. Sacerdos, de Offic. Ord."* (Ed. Coloniae, 1612, 100). This work was placed on the Index in 1602, but released in 1608, when an amended edition was published. Cfr. H. Reusch, *Der Index der verbotenen Bücher,* II (1885), 312.

by the knowledge obtained in confession, even though it involved detriment to the penitent, provided only that others would not notice it, there were a few who objected to this view.

Richard of Middletown (+ about 1308), for instance, pointed out that such a use of the knowledge gained in confession must necessarily deter the faithful from the tribunal of Penance, because if others learn from a penitent that he was removed from office in consequence of confession, they as well as the penitent will easily be induced to conceal their sins in future.[1]

Richard seems not have taken into account the fact that this danger also exists when the faithful in general know that the confessor may use his knowledge of confession to their detriment; for he admits that some consider it lawful for a superior to remove a subordinate from office if he can do so without arousing suspicion either in the penitent or in others.[2]

[1] *In Sent.*, IV, d. 21, art. 4, qu. 2, ad 4: *"Praelatus . . . removendo ab officio suum subditum, quem per confessionem scit male uti suo officio, et si faciat utilitatem illius, tamen facit contra utilitatem communitatis, quia alii per revelationem remoti ab officio scientes, quod pro sua confessione a suo officio remotus est, proniores reddentur ad hoc ut non confiteantur secundum veritatem, et ille idem minus confessionem reverebitur, et pronior erit ad peccatorum suorum celationem."* (Ed. Brixiae, 1656, IV, 342).

[2] *L. c.*

In this sense *Astesanus* [3] and *Baptist de Salvis* [4] adopted the opinion of Richard and for practical reasons decided in favor of the use of sacramental knowledge, provided no suspicion was aroused.

In contradiction to them the above-mentioned 15th century treatise on the Seal in *Cod. Lat. Monac. 2834* expresses itself very decidedly against any use of the knowledge gained in confession: *"Ponatur casus, quod monachus habeat officium sibi commissum, in quo committat infinita peccata, aut negligentias, aut est in loco ubi perpetrat cum saecularibus personis gravissima crimina: si abbas hec precise per confessionem cognovit, nullatenus debet eum ab officio deponere aut de loco removere, etiamsi per hoc totum monasterium periret; item ponatur casus, quod confessor tantum sciat ianuam, fenestram sive alium locum, per quod confitens ingreditur ad faciendum multa mala, nequaquam debet obstruere talem locum, nisi sciret ante aut post confessionem aut aliunde esset notum, nec debet alicui hoc dicere ut faciat."* [5]

This treatise seems not to have been considered of much importance, because it is nowhere quoted. Nevertheless, it furnishes proof that the stricter view concerning the use of sacramental knowledge

[3] *Summa de Casibus,* l. V, tit. 20 (ed. Norimb., 1482, fol. 93[v] a).

[4] *Summa Rosella, s. verb. "Confess. Celatio,"* n. 1 (Venet., 1488, fol. 40 b).

[5] Clm. 2834 (*saec. XV*), fol. 78.

existed in some places as early as the 15th century.

At the beginning of the 16th century this view received a new champion in the person of *Bartholomew Fumus,* a Dominican (+ 1545). In his widely read *Summa Aurea Armilla* he lays it down as a principle that the confessor must not do anything out of the knowledge he has obtained in confession that would be apt to deter the penitent from the tribunal of Penance. He should, on the contrary, act as if he had never heard anything from the penitent.[6] That Bartholomew did not mean the closing words to be taken in an absolute sense, is apparent from the context; for he thinks it lawful to warn superiors and others in general terms, but regards it as unlawful to show an unfriendly face towards the penitent after confession or to remove him from office, unless there be other reasons for doing so.[7]

The much quoted *Dominic Bañez* (+ 1604) inclines to the same view. He writes in his treatise on grace that the opinion of celebrated doctors, according to which the confessor,—*e. g.,* the bishop or superior of an Order,—may exclude unworthy can-

[6] *Summa, s. verb. "Confessor,"* n. 7: *"Si quis scit aliquem tantum in confessione excommunicatum, vel inimicum, non debet propter hoc ipsum vitare, nec peiorem faciem quam antea ei ostendere, et breviter nihil agere propter quod possit confitens retrahi, et taliter se debet habere confessor, ac si nihil de eo unquam audisset nisi aliunde hoc sciat."* (Ed. Lugd., 1595, 223).

[7] *L. c.,* n. 5.

didates from certain offices or positions of honor, appears to him exceedingly harsh and hardly to be carried out in practice, because it involves, to say the least, a humiliation of the penitent when he sees that, on account of his confession, he is deprived of a public honor, and as a consequence thereof he might be unwilling to confess to his superior in future.[8]

The year 1590 marks a turn in our question. In this year the General of the Jesuits, Claudius Aquaviva, issued an order forbidding all superiors of the Society of Jesus to use in any manner whatsoever the knowledge obtained in confession for the external guidance of their subordinates. Though, according to some theologians, the external use of such knowledge is lawful, provided the confession is not thereby revealed, nevertheless, he says, this doctrine entails grave danger for the liberty of conscience of subordinates. Therefore, he strictly enjoined upon the superiors to see to it that neither they themselves nor any other member of the Order introduce the said doctrine, teach it in public or private, or act according to it in practice. The confessors of the

[8] *Comment. in S. Theol. S. Thom., 2a 2ae,* qu. 33, art. 8: *"Haec tamen opinio mihi durissima videtur, et quae vix possit in usum venire. Quoniam saltem ipse paenitens confundetur intelligens, quod propter peccatum, quod in confessione dixit, privatur honore publico et deinceps abhorrebit, et fugit confiteri proprio praelato confessione sacramentali sua peccata."* (*Comment. Scholast.,* III, Duaci, 1615, 509 A B).

Society were exhorted to behave in all cases as if they had heard nothing in confession.[9]

It seems that, among other things, the manifestation of conscience customary in the Society of Jesus gave rise to the above-quoted instruction. Every member of the Order must from time to time give an account of his interior soul-life to his superior.[10] According to St. Ignatius, this may be done either in sacramental confession or outside of it.[11]

[9] *Instructio V. De Notitia Habita per Confessionem: "Tametsi non desunt doctores, qui sentiant, salvo sacramentalis confessionis sigillo, iustis de causis licere nonnumquam confessario (cum id fieri potest sine ulla revelatae confessionis suspicione) uti extra confessionem notitia per confessionem habita; tamen quoniam haec doctrina et eam exigit in tanta re circumspectionem, quam servare perdifficile sit; et interim posset aliquando retardare subditorum libertatem, quam huius fori sanctitas et nostrae societatis institutum requirunt in seipsis rebusque suis confessario aperiendis; idcirco visum nobis est in Domino statuere, sicut et severe statuimus, pro reverentia qua semper societas nostra coluit huius sacramenti inviolabile sigillum, et libertatem; ut omnes superiores diligenter caveant, ne vel ipsi vel nostrorum aliquis, supradictam doctrinam usquam introducant; nec illam publice aut privatim doceant, nec ea utantur ullo modo (nisi forte de paenitentis licentia), sed ita prorsus in omnibus casibus nostri se gerant confessarii, ac si in confessione nihil penitus audivissent; sibique persuadeant, ut humanarum rerum regimen ab hoc sacramento longissime distat, ita debere nullatenus ab eo pendere."* (*Institutum Societatis Iesu,* Vol. II [Prague, 1757], 312).

[10] *Examen Generale,* c. IV, § 36, 40 (*Instit.,* I, 350 f.).

[11] *Constitution.,* pars VI, c. I, § 2: *"Ea de causa tam omnes Professi quam formati Coadiutores, semel singulis annis (et quoties praeterea Superiori visum fuerit) ad suas conscientias*

The purpose of this custom undoubtedly is greater efficiency in the guidance of the individual members in the pursuit of virtue and perfection. It seems, however, that in the early days of the Society the aforesaid knowledge was employed for the external guidance of subordinates, and this naturally gave rise to the question whether this is permissible, especially when the manifestation of conscience took place in sacramental confession. It is not at all improbable that on this point appeal was occasionally made to the general teaching of theologians, which gave rise to difficulties. Certain it is that the Spanish Jesuits complained about the practice to the Inquisition and that their complaint was submitted to Sixtus V in the form of a memorial, in the year 1590.[12] This

in confessione vel secreto, vel alia ratione iisdem aperiendas . . . parati esse debent." (*L. c.*, 408).—*Examen Generale*, c. VI, 36: "*. . . ut melius in spiritu cum gratia uberiori, ad maiorem divinae bonitatis gloriam proficiant.*" (*Institut.*, II, 350).

[12] This memorial is in the Vatican Library (Ms. Ottobonian. Lat., 495). Fr. Bruno Katterbach had the kindness to copy from it the following passage for my use: pag. 1 sq.: "*Con lo qual dizen hazerse el sancto sacramento dela confession odioso, pues hazen que todas sus flaquezas y miserias los ayan los subditos de manifestar muchas vezes y a muchas personas, y para governarlos exteriormente, y que desto procede el detener a muchos religiosos veinte y treinta anos sin admitirlos ala profession, y que el que entre moco novicio, se vee biejo y novicio. Dizen ambien hazerse este sancto sacramento perniciosso, por que da occasion que no se haga la confession entera y que se callen en ella muchas faltas, y aun dizen que con tanto*

may have been the immediate occasion of Aquaviva's order.[13]

Although the enactment applied only to the Society of Jesus, it was nevertheless of great importance for the further development of the Seal of Confession. On account of the leading position which the Order held at that time in the domain of moral theology and Canon Law, the prohibition to teach or defend the lawfulness of the contrary opinion was bound to produce a change;—all the more so when

perjuizio y dano de sus honoras y famas no les obliga el precepto dela integridad de este sancto sacramento y que no peccan en dimidiar sus confessiones. Demas desto dizen este sancto sacramento se haze sacrilego de parte delos superiores confessores, pues usan del para sus disignios y gobierno exterior, y de parte delos que se confiessan pues dividen la confession, no se confessando enteramente con escrupulo de sus conciencias, y que ay muchos que so color de confessiones dizen de otros al superior quando se confiessan testimonios falsos, como saben que su gobierno es de confessiones y que el superior los a de creer y escrivirlo al General, y que assi se an visto muchos testimonios lebantados y muchos castigos sin culpa. De do se sigue que las faltas y caydas en la decha compañía perpetuamente estan en pie y dexan al hombre sin credito." (Cfr. Lea, *A History of Auricular Confession,* I, 457 [1]).

[13] L. Honoré, *Le Secret,* p. 86, denies that there is any connection between that order and the Jesuit practice of the manifestation of conscience. However, the memorial insinuates it quite plainly, and when men like Dionysius Vasquez and H. Henriquez coöperated in writing the memorial, as Honoré demonstrates with great probability, then the supposition of such a connection is not altogether without a foundation.

a few years later Clement VIII (1592–1605) issued a similar ordinance to the heads of all religious Orders.

In his decree of May 26, 1593, concerning the reserved cases conceded to the various Orders, Clement VIII ordains among other things: *"Tam superiores pro tempore existentes, quam confessarii, qui ad superioritatis gradum fuerint promoti, caveant diligentissime ne ea notitia, quam de aliorum peccatis in confessione habuerunt, ad exteriorem gubernationem utantur."* [14]

Another provision of the decree is of importance for our question. Clement VIII forbids the superiors of religious Orders to hear the confessions of their subordinates, except in two cases: (1) whenever a subordinate must consult the superior concerning a reserved case; (2) whenever the subordinate of his own free will desires to confess to his superior. Thus the Pope was not satisfied with forbidding superiors to use the knowledge obtained in confession, but he also wished to guard against this danger by decreeing that ordinarily subordinates should not be obliged to confess to their superiors.[15]

If we compare this ordinance of Clement VIII

[14] *Decretum "Sanctissimus Dominus,"* § 4 (*Bull. Rom.*, ed. Coquelines-Mainardi [Romae, 1734 ff.], V, 254).

[15] *Ibid.*, § 2: *"Non liceat Superioribus Regularium confessiones subditorum audire, nisi quando peccatum aliquod reservatum admiserint aut ipsimet subditi sponte ac proprio motu id ab eis petierint."* (*Bull. Rom., l. c.*).

with Aquaviva's instruction, we see that both agree on the main points. True, the wording of Aquaviva's order seems to go farther, because it not only prohibits superiors from using knowledge obtained in confession, as does Clement VIII, but extends this prohibition to all confessors of the Society. However, the Jesuit *Tanner* (+ 1632) remarks that in 1603, the General of the Society, in answer to an inquiry from Germany, declared that it was his intention to prohibit the use of knowledge gained from confession only in affairs pertaining to the government and direction by the superior; in all other cases everyone could act according to his own conscience, or be guided by the views of the theologians.[16] This fact explains why the Jesuits continued to take part in controversies concerning kindred questions.

C. Further Controversies Concerning the Lawful and Unlawful Use of Knowledge Gained through Confession—Final Solution of the Question under Innocent XI (1682)

The decree of Clement VIII was directed solely to the heads of the various religious Orders and referred only to the external guidance of their subjects. Hence it remained an open question whether

[16] *Theol. Scholast.*, tom. IV, disp. VI, qu. 9, dub. 6, n. 143 (Ingolst., 1627, 1751).

or not others, *e. g.*, a bishop, may use knowledge gained in confession when filling vacancies, or whether members of a religious Order may refuse to cast their ballot for an unworthy candidate at an election of a superior.

The solution of this question is closely connected with another, whether the ordinance of Clement VIII established a *new law* or was merely a more *precise formulation* of what was contained in the obligation of the Seal. In the latter case the ordinance, though in its external form directed solely to the heads of the religious Orders, applied to all confessors.

Thomas Sanchez († 1610) [1] was one of the first theologians who treated the question of the Seal after the above-mentioned decree. In his work *De Matrimonio* he cites about forty canonists and theologians who considered the use of knowledge obtained through confession lawful. Nevertheless he decides in favor of the contrary opinion. Though, besides the ordinances of Aquaviva and Clement VIII, he is able to cite but two authors, Bartholomew Fumus and Dominic Bañez, he strongly supports his opinion by intrinsic reasons. He argues as follows: Even though others may not notice that the confessor makes use of his knowledge, the penitent himself will in many cases grow suspicious; and even if this were not the case, people will be deterred from confession if they know that the priest is allowed

[1] Cfr. v. Schulte, *Geschichte,* III, 737 ff.

to make use of what he hears in the confessional. Therefore, the same reason which is alleged to prove the strict obligation of the Seal, also forbids the use of knowledge obtained in confession, because by this same proceeding the Sacrament would be equally made odious.[2]

Although Sanchez refers to the decree of Clement VIII, he does not seem to regard it as of universal obligation, for he admits that the contrary opinion, on account of the large number of its defenders, enjoys a high degree of probability.[3]

Martin Delrio (+ 1608) expresses himself in a similar manner on the Clementine decree. According to him the decree binds only the religious su-

[2] *Disputation. de Sancto Matrimonii Sacramento,* l. III, disp. 16, qu. 1, n. 3: *"Non licebit, ob crimen auditum in confessione negare illi etiam occulte Eucharistiam, ordines, suffragium vel removere eum ab officio ad nutum amovibili, quia saltem ipsi paenitenti obicitur crimen de illoque facto ipso reprehenditur . . . nihil confessionem ita difficilem, onerosam et odiosam reddet, quam si peccatores intelligant posse confessorem ob solius confessionis notitiam ipsos privare ordinibus, Eucharistia, officiis honorificis, negare suffragia ad obtinenda officia vel beneficia cum haec omnia tanti homines faciant. . . . Esto ne remotus ipse ab officio suspicari posset id ortum habere ex confessione, at satis est homines nosse peccata sola confessione cognita ius tribuere ad hoc, ut omnino timeant confiteri ab eaque retrahantur."* (Ed. Antverp., 1607, 267).

[3] *Ibid.,* n. 4: *"Pro priore sententia [sc. quae affirmat licitum esse usum notitiae modo absit periculum revelandae confessionis] militant auctoritates tot tantorumque virorum et fortissimae rationes quibus fulcitur: quare negari non potest esse probabilissimam."* (*L. c.,* 268).

periors and is based on human law. The opinion which directs the confessor to act as if he had heard nothing in confession, according to Delrio, is safer and more in conformity with the dignity of the Sacrament and the purpose of Clement VIII.[4] Still, whenever it can be done without injury to the Seal, the confessor is bound to make use of his knowledge in certain cases, *e. g.*, to avert a calamity from the State or from his fellowmen, because this obligation rests on the divine law and cannot be abrogated by human legislation.[5]

Suarez (+ 1617) likewise sees in the decree of Clement VIII a positive ordinance which obligates only the regular clergy, though he says he does not dare to reject the common opinion that the use of knowledge gained through confession is lawful.[6]

Jerome Onufrius, who in 1611 wrote a special treatise on the Seal, also leaves our question undecided. For intrinsic reasons he inclines to the stricter view, especially since the decree of Clement VIII,

[4] *Disquisitiones Magicae,* l. VI, c. 1, sect. 2 (ed. Mogunt., 1624, 911).

[5] *"Cum tamen haec prohibitio in isto casu sit iuris humani et periculum a re publica vel proximis cum citra damnum tuum et sigilli violationem queas propulsare sit iuris divini, haud dubie casus posset incidere, quod quis teneretur hac scientia ad malum quemadmodum diximus propulsandum avertendumque uti, praesertim cum sententia illa communis sit probabilis et nullum ius humanum valeat impedire."* (*l. c.,* 912).

[6] *De Sacrament. Paenit.,* disp. 33, sect. 7, n. 4 (*Opp. Omn.,* tom. XXII, Paris, 1866, 707 f.).

but expressly says: *"Ita tamen, ut nullo modo condemnare audeam, quod cum tantis viris dicitur in priori [sc. sententia]."* [7]

The Jesuit *Valerius Reginald* in his celebrated *Praxis Fori Paenitentialis* (1616) defends the opinion that in a canonical election, especially when it is secret, the confessor may refuse his ballot to one whom he otherwise believed to be in every way fit for the office, but of whom he learned through confession that he was unworthy.[8] Reginald, without mentioning the decree of Clement VIII, even concedes to religious superiors the right to remove their subordinates from office. If some should surmise a grave offence in the penitent, this must be ascribed to their evil-mindedness, because they interpret the affair in the worst possible way.[9]

Francis Sylvius (towards 1620) mentions the decree of Clement VIII, but, in conformity with its

[7] *De Sacro Sigillo Opusculum,* sect. 2, qu. 2, dub. 2 (Mediolani, 1611, 72).

[8] *Praxis Fori Paenitentialis,* l. III, c. 3, sect. 2, n. 33: *"Restringenda est [sc. obligatio sigilli] secundo, ut non impediat quin confessarius in electione praelati possit suum suffragium negare illi, quem per omnes alias vias haberet tamquam optimum: si per ipsius confessionem solam cognoscat quod malus indignusque sit."* (Ed. Lugd., 1616, 155).

[9] *Op. cit.,* l. III, c. 2, sect. 1, n. 16: *"Quod dubium est an abbas, qui ex confessione monachi novit vergere in perniciem religionis, quod maneat in aliquo officio, possit illum amovere, responsio vero ad illud est: posse, dummodo id fiat sine revelatione confessionis, seu absque eo quod prodatur monachi peccatum. . . . Quodsi videntes illum amotum, inde concipiant*

wording, applies it solely to religious superiors. For the rest he holds with St. Thomas that one may refuse to vote for an unworthy candidate or remove him from office, so far as this can be done without exciting suspicion.[10]

Under the very eyes of the Pope, *Vincent Filliucci,* who lectured for ten years on moral theology in Rome and was penitentiary of St. Peter's (+ 1622),[11] taught the same doctrine. For a lawful use of the knowledge obtained through confession he requires: (1) an important cause, and (2) that no unjust inconvenience arise therefrom for the penitent. A further exception is when there is a special prohibition, as in the case of religious superiors.[12]

The German Jesuit *Tanner* (1627) regards it as probable that the confessor, in an election, is not obliged to make use of his knowledge when a vacant office is to be filled, but seems to concede that he may do so.[13]

In a *Freiburg doctoral dissertation* (1626) on the Sacrament of Penance it is maintained that the de-

commisisse grave aliquod peccatum, ipsis imputanda est eiusmodi conceptionis malitia, tanquam iis qui temere et in peiorem partem rem interpretantur." (Ed. Lugd., 1616, 151).

[10] *Comment. in Summam Thomae Aquin.,* III Pars, Supplem., XI, art. 1, qu. 3. (Ed. Antverp., 1714, IV, 531).

[11] Cfr. Hurter, *Nomenclator,* III,[3] 887.

[12] *Compendium Quaestionum Moralium,* pars I, tract. VII (ed. Lugd., 1626, 83 f.).

[13] *Theol. Scholast., de Paenit.,* disp. VI, qu. 9, dub. 6, n. 143 (ed. Ingolst., 1627, IV, 1750; cfr. also n. 142).

cree of Clement VIII is a positive ordinance and obligates only the regular clergy. Where there is question of the fulfilment of a natural duty, *e. g.*, in case of a great peril, the knowledge gained in confession may be used, provided no direct or indirect revelation of the confession itself takes place.[14]

Although the majority of theologians deduced from the ordinance of Clement VIII a strict obligation only for religious superiors, nevertheless this school since Sanchez continually gained adherents, who rejected the use of knowledge derived from confession as unlawful, in so far as it entailed any disadvantage or hardship to the penitent.

Paul Laymann (+ 1625),[15] noted both as a canonist and as a moralist, positively defends this view. His main argument is borrowed from Sanchez: *"Ipsa persuasio haec, si nimirum sciant fideles, se ob peccatorum suorum confessionem impediri posse a consequendis officiis ac dignitatibus, abhorrebunt a confessione iis praesertim facienda, quos vel leviter*

[14] *Theses Theologicae de Confessione Sacramentali . . . auctore Ioh. Iac. Ravarra,* c. 7, *De Sigillo Confessionis,* n. 115: *"Verum Praelatis regularibus speciatim interdictum a Clem. VIII., ne notitia ex confessione hausta ad externam gubernationem utantur, etsi alias salvo sigillo uti possent. Quod decretum, ut sonat, tantum pertinet ad Praelatos regulares: et loquitur de personali gubernatione ipsius paenitentis, non aliarum rerum et personarum neque in casu magnae et publicae necessitatis obligat."* (Ed. Friburg., 1627).

[15] Cfr. v. Schulte, *Geschichte,* III, 133 f.; Hurter, *Nomenclator,* III,[3] 884.

suspicantur aliquando sibi prodesse vel obesse posse." [16]

Martin Bonacina (+ 1631) [17] in his moral theology especially stresses the viewpoint that in the use of knowledge derived from confession lies to a certain extent a revelation of the confession and a humiliating reproach to the penitent. Therefore the Seal as such prohibits the priest from refusing to vote for an unworthy candidate, from denying him communion or keeping him from receiving the Sacrament of Matrimony, in fact, from doing anything at all which might redound to the penitent's disgrace or detriment.[18]

Stephen Faqundez (+ 1645) [19] devotes several chapters of his work *De Quinque Praeceptis* to this question. After having submitted the reasons *pro* and *con* to a minute scrutiny, he declares in favor of the stricter view.[20]

[16] *Theologia Moralis,* l. V, tract. 6, c. 14, n. 22 (ed. Bamberg., 1677, 414).

[17] Cfr. Hurter, *Nomenclator,* III,[3] 888. His works appeared in print for the first time at Lyons in 1624.

[18] *De Paenitentiae Sacramento,* disp. 5, qu. 6, sect. 5, punct. 4, n. 13: "*Ex dictis ergo constat confessarium circa audita in confessione se debere gerere ac si nihil sciret in iis rebus ex quibus sequeretur pudor, confusio aut damnum paenitenti confessario aliter agente.*" (*Summa Moral.,* I (Antverp., 1643), 151; cfr. also n. 14–22).

[19] Cfr. Hurter, *Nomenclator,* III,[3] 1187.

[20] *Tractatus in V Ecclesiae Praecepta,* l. VI, c. 2, 3 (ed. Mogunt., 1628, 433 ff.).

The same view is held by *Ferdinand Castropalao* (+ 1633),[21] *Antony Diana* (+ 1663),[22] and *John Dicastillo* (+ 1653).[23]

The most determined opponent of the laxer opinion was *Cardinal de Lugo* (+ 1660). He argues thus: Either the penitent is aware that, on account of his confession, he is deprived of his office or refused an office, in which case there is a direct violation of the Seal; or he is not aware of the fact, in which case confession must be a double burden to him, since he knows in advance that the priest will secretly make use of the knowledge against him, whilst he is helpless to protect himself. Therefore, the decree of Clement VIII is not merely a positive ordinance; for it being a natural duty to protect our fellowman from injury, or religion from desecration, no human ordinance can prohibit these actions; yet Clement VIII does this when he forbids all superiors without exception to use the knowledge gained in confession for the external guidance of their subjects. Hence this ordinance must be founded on the nature of the Sacrament, and consequently based on divine right, in which case it obliges not only the regular clergy, but all confessors. "Therefore I do not know," says

[21] *Summa Moralis,* p. IV, tract. 23, punct. 19, n. 20 (ed. Lugd., 1669, 171 ff.).

[22] *Resolutiones Morales,* tract. XI, resol. 3 ff. (ed. Antverp., 1640, V, 340 ff.).

[23] *De Sacramentis,* tract. VIII, disp. 12, dub. 7, n. 140 ff. (ed. Antverp., 1652, II, 825 ff.).

de Lugo in conclusion, "how the contrary opinion can still be maintained after the decree of Clement VIII.[24]

With the same arguments the *Salmanticenses* defend the universally binding force of the ordinance of Clement VIII.[25]

Another authority on our question is undoubtedly *George Gobat* (+ 1679), who in his *Clypeus Confessariorum* lays down the rule: *"Decretum Clementis VIII de superioribus regularibus est omnino intelligendum etiam de omnibus aliis aliorum hominum confessariis. Ita ut nulli confessario liceat quoad externas actiones exercendas, omittendas uti praedicta notitia cum aliqua seu iniusta seu secundum se iusta molestia, incommodo, damno, rubore, iracundia, indignatione paenitentis."* [26]

Despite the positiveness with which Gobat lays down this principle, he is obliged to make certain concessions to the views of his opponents. *"Tamen nequeo negare,"* he says, *"probabilitatem practicam et speculativam negantibus hanc tam universalem regulam."* [27]

The same attitude is taken by *Herman Busem-*

[24] *De Sacram. Paenit.*, disp. 23, sect. 5, n. 97, 98 (*Opp. Omn.*, V, Paris., 1893, 385).

[25] *De Sacram. Paenit.*, disp. 9, dub. 3, n. 49 (*Cursus Theologicus Collegii Salmanticensis*, XX, [Parisiis, 1883], 543).

[26] *Clypeus Conf.*, cas. 23, n. 882 (*Opera Moralia*, I [ed. Monachii, 1683], 845).

[27] *Loco. cit.*; cfr. also n. 891, 892.

baum (+ 1668) in his widely circulated *Medulla Theologiae Moralis*. Though he regards the stricter view as more correct, he nevertheless admits the other as lawful.[28]

Thomas Tamburini (+ 1675), who occupies an intermediate position in our question, holds that the decree of Clement VIII applies only to the regular clergy, not to all confessors. He bases his opinion chiefly on the authority of the Theatine theologian, *Thomas Hurtado* (+ 1659), who in his *Resolutiones Morales* [29] maintained that the bishops as well as other priests, in so far as they are not regulars, may use the knowledge derived from confession for the guidance of others, because this is in itself lawful and the prohibition of the Pope was addressed solely to the regular clergy.[30]

Sainte-Beuve (+ 1677), in a case laid before him in 1664, also decides in favor of using knowledge obtained through confession in an election to, as also in conferring or removing from, an office, provided no suspicion is aroused *ad extra*.[31]

[28] L. V, tract. IV, c. 3, n. 4 (ed. Romae, 1844, I, 580).

[29] L. II, tract. VI, c. 11, resol. 32; tract. XII, c. 1, resol. 23.

[30] *Methodus Expeditae Confessionis*, l. V, c. 5, § 2, n. 9 (ed. Colon., 1657, 443).

[31] *Résolutions de Plusieurs Cas de Conscience*, III (Paris, 1704) cas. 18. Cfr. Lenglet du Fresnoy, *Traité Historique et Dogmatique du Secret Inviolable de la Confession* (Lille, 1708), append., 43; *Revue du Clergé Français*, XLI (1905), 475.

Although the view favorable to the Seal thus gradually gained predominance,[32] the laxer view nevertheless still had its adherents, at least no one dared to dispute that it could be legitimately held.

As early as the middle of the 17th century J. Dicastillo had suggested that the Apostolic See should forbid this milder view by a universal decree.[33] In fact, it was thus that the question *was* solved when proposed to the Holy Office for a decision, in 1682. The point at issue is here couched in the positive form of a proposition, which is then condemned by the Holy Office. For a better understanding we reproduce the full text of the decision:

"Feria IV. die 18. Nov. 1682.

"In generali Congregatione S. Romanae et Universalis Inquisitionis habita in Conventu S. Mariae super Minervam coram Eminentiss. S. R. E. Cardinalibus in tota Rep. christiana contra haereticam pravitatem Generalibus Inquisitoribus a S. Sede Apostolica specialiter deputatis.

[32] Dicastillo says of it about the middle of the 17th century: *"Ita sentiunt communiter recentiores" (l. c.).*

[33] *De Sacramentis,* tract. VIII, disp. 12, dub. 7, n. 150: *"Ex hac doctrina ego colligerem primo Summum Pontificem, aut etiam concilium generale (si quod cogeretur aliquando) consultissimum facturum si serio, et sub gravibus poenis omnibus superioribus praecipiat, ut nullo modo ad externam gubernationem scientia habita in confessione utantur extendendo sc. Decretum Clementis VIII editum pro religiosis ad ceteros quoscumque praelatos, et alios confessores."* (Ed. Antverp., 1652, II, 827).

"Praevia matura consultatione dominorum consultorum facta fuit discussio sequentis propositionis:

"Scientia ex confessione acquisita uti licet, modo fiat sine directa, aut indirecta revelatione et gravamine paenitentis nisi aliud multo maius ex non usu sequatur, in cuius comparatione prius merito contemnatur.

"Addita deinde explicatione, sive limitatione, quod sit intelligenda de usu scientiae ex confessione acquisitae cum gravamine paenitentis, seclusa quacumque revelatione atque in casu, quo multo maius gravamen ex non usu sequeretur. Et statuerunt dictam propositionem, quatenus admittit usum dictae scientiae cum gravamine paenitentis omnino prohibendam esse etiam cum dicta explicatione sive limitatione: Et praesenti decreto prohibent, ne quis ultra audeat talem doctrinam publice aut private docere aut defendere sub poenis arbitrio Sacrae Congregationis infligendis; mandantes etiam universis Sacramenti Paenitentiae ministris, ut ab ea in praxim deducenda prorsus abstineant." [34]

At first sight it might seem as if the point at issue in this decree differed from the view the development of which we have traced on the preceding pages. As a matter of fact, however, this is not the case.

The question at issue is the use of knowledge ob-

[34] Dominicus Viva, *Damnatarum Thesium Theologica Trutina,* pars III, § 6 (Francofurti ad M., 1711, II, 328 ff.). Cfr. Denziger, *Enchiridion,*[10] n. 1220 (Friburgi, 1908), 356.

tained through confession, if accompanied by some detriment to the penitent (*cum gravamine paenitentis*); every direct or indirect revelation of confession being excluded (*exclusa quacumque revelatione*). The purpose of the use is none other than to shield the penitent from a still greater evil (*in casu, quo multo maius gravamen eiusdem paenitentis ex non usu sequeretur*). By this greater evil the advocates of the said view ordinarily understood the spiritual injury which the penitent would suffer, *e. g.,* if a priest would give communion to an unworthy person, or a superior would not remove the occasion of sin from his subordinate. Hence the point at issue is precisely the same as that with which we have become acquainted. For the theologians quoted above considered the use of knowledge derived from confession lawful only when there was a sufficient reason for it, and this reason was above all to shield the penitent and others from serious injury.

Now, the decision of the Holy Office is to the effect that the doctrine which allows knowledge obtained through confession to be used to the annoyance of the penitent, must by all means be rejected, even in case a more serious detriment is thereby to be averted from the penitent. Nobody must in future dare to teach or to defend publicly or in private such a doctrine, and confessors must take care not to apply it practically in any manner.

The decree of the Holy Office, therefore, does *not*

forbid such a use of the knowledge derived from confession as would entail no burden to the penitent or would not deter him from receiving the Sacrament of Penance.[35] To this category belong actions which can not be unwelcome to the penitent, *e. g.*, whenever the priest, in consequence of confession, shows greater friendliness towards him, or uses his experience for study, prayer, or for the benefit of others.

What kind of obligation does this decision impose? In its external form it is a decree of the Holy Office, hence not a decision of the Pope himself, much less an *ex cathedra* definition. Nevertheless it is universally binding [36] by virtue of the authority conferred on this Congregation by the Pontiff to decide authoritatively questions of faith and morals.

The circumstance that the Congregation forbids every use of the knowledge derived from confession *"cum gravamine paenitentis,"* led *Dominic Viva* (+ 1726) to draw the conclusion that such use is *per se* reprehensible, and the decision of the Congregation is therefore to be regarded merely as an interpretation of the natural and the divine law; because if it were a purely ecclesiastical precept, it would admit of exceptions. From this fact Viva furthermore concludes that a confessor would not be

[35] Schmalzgrueber, *Ius Can.*, l. V, tit. 38, n. 71 (ed. Neapol., 1738, V, 337).

[36] Viva, *l. c.*, § 9, p. 340.

allowed to make use of the knowledge obtained through confession even to preserve life, and that the violation of the ordinance would be a grievous sin, unless insignificance of matter or inadvertence would form an excuse.[37] No definite censure or penalty is attached to the transgression, but the S. Congregation reserved to itself the right to impose such a censure or penalty in proportion to the guilt of the individual transgressor.

One result of this decision of the Holy Office was that the contrary opinion of certain canonists and theologians was altogether abandoned.[38] Not long after this decision of the Holy Office several professors in Louvain, especially the Jansenist *Huy-*

[37] *L. c.*, § 7, p. 331 ff.; § 9, p. 344 ff.

[38] Cfr. A. Reiffenstuel, *Theol. Mor.*, tract. 14, dist. 9, qu. 3, n. 30 (Monachii, 1726, II, 1093); Clericatus, *Decisiones Sacramentales*, dec. 49, n. 13 (August. Vind., 1730, I, 209); Schmalzgrueber, *Ius Can.* l. V, tit. 38, n. 69 (Neapoli, 1738, V, 337); L. Ferraris, *Bibliotheca s. v. "Sigillum,"* n. 16 (VII [Romae, 1891], 197); Benedict XIV *De Synodo Dioecesana*, l. VI, c. 11, n. 6; Billuart, *Summa S. Thomae, de Sacramento Paenit.*, diss. 8, art. 5 (Parisiis, 1872, VII, 214); Liguori, *Opus. Mor.*, l. VI, n. 657; Mich. Benger, *Pastoraltheologie*, III (Ratisbon, 1863), 467 ff; A. Lehmkuhl, *Theol. Mor.*, II [11] (Friburgi, 1910), n. 601.—Natalis Alexander is an exception. In his *Theologia Dogmatica et Moralis* he quotes the decree of Clement VIII, but, contrary to the decision of the Holy Office of 1682, believes it to be lawful to refuse one's vote for an unworthy candidate or give a so-called confession-card to an impenitent sinner. (*De Sacram. Paenit.*, c. 5, art. 10, regula 52, 56 (ed. Parisiis, 1743, II, 217, 221 f.).

gens (1684), were accused of having taught false doctrines concerning the use of knowledge obtained in confession;[39] however, they positively repudiated the accusation, and a series of theses, which had been discussed at the University of Louvain during the years 1684–1690[40] regarding the Seal of Confession and the use of knowledge obtained in confession agree fully with the teaching of the Church. The same may be said of the declarations which the dean of the faculty, *Hennebel,* made to the Holy See on Sept. 10, 1700,[41] in the name of the professors of Louvain. Nevertheless some minor differences of opinion concerning the limits of the legitimate use of sacramental knowledge in particular cases still remained.

D. Some Special Decisions of the Roman Congregations—The Code of Canon Law on the Use of Knowledge Derived from Confession

To supplement our account a few casuistic decisions of the Roman Congregations, referring to the use of knowledge obtained through confession merit attention. In the year 1673 the vicar-general of

[39] Cfr. Honoré, *Le Secret de la Confession,* pp. 100 ff.

[40] Lenglet du Fresnoy, *Traite hist.*[2] (Paris, 1715), 430–452; reprinted in Honoré, *Le Secret,* 133–149.

[41] Lenglet du Fresnoy, *loc. cit.,* 453; Honoré, p. 105.

Trent requested the regular clergy of the city of Bulgano to inform him which sins were most frequently committed in that city, in order that he might be able to determine the number of reserved cases. Although he promised to observe strict silence regarding the information, the regulars refused to comply with his wish. The matter was submitted to the S. Congregation of the Council, which, on August 19, 1673, decided as follows: *"Regulares ad id cogi non posse, et monendum vicarium, ut ab huiusmodi interrogationibus abstineret."* [1]

A decree of the same Congregation, dated November 18, 1681, forbade missionaries to communicate, even in a general way, the sins made known to them in confession, to the parish priest in order to cause him to be more zealous in the cure of souls.[2]

In China some missionaries had introduced the custom of giving to those of their penitents whom they wished to admit to communion a certificate bearing their seal, and only those who had such a certif-

[1] Cfr. Benedict XIV, *De Synodo Dioecesana,* l. V. c. 4, n. 3. In 1484 the magistrate of Cologne enquired of the confessors of that city whether certain sexual crimes occurred there. Several confessors refused to answer because of the Seal. The majority, however, gave the desired information, without, of course, mentioning any names. Cfr. Justus Hashagen, *"Aus Kölner Prozessakten: Beiträge zur Geschichte der Sittenzustände in Köln im 15. und 16. Jahrhundert"* in the *Archiv für Kulturgeschichte,* III, Berlin, 1905.

[2] Cfr. Tappehorn, *Verwaltung des Buszsakramentes,* Dülmen, 1893, 228.

icate were admitted to the Holy Table. The S. Congregation of the Propaganda, on January 14, 1806, decided: *"Esse improbandam praxim praebendi in ipso tribunali Paenitentiae cartulam sigillo signatam iis fidelibus, quibus permittitur Communio, qua postridie exhibita, ad sacram mensam admitti possint."* [3]

An *Instruction* addressed by the same S. Congregation to the Vicar-Apostolic of Nankin, in 1836, treats of a similar case. The missionaries there were accustomed to count the penitents to be admitted to holy communion in the confessional, and to consecrate as many hosts as there were penitents. In answer to a query of the Vicar-Apostolic, the Congregation declared that this practice was an abuse: *"Nemo non videt missionarios sic agentes uti scientia in confessione acquisita, quod est Ecclesiae legibus expresse vetitum; nec prava haec agendi ratio efficax est ad arcendos indignos: Potest enim indignus accedere inter primos ad sacram synaxim, ex quo a communione dignus pro indigno excluderetur, addito etiam periculo ulterioris scandali in sacramentalis confessionis praeiudicium; quare abusus hic est omnino tollendus."* [4]

In this connection we may mention the regulation issued by the Holy Office in 1899 for Rome upon the express order of Pope Leo XIII: *"Huic Supremae*

[3] *Collectanea S. Congreg. de Propag. Fide,* Romae, 1893, n. 937.

[4] *Collectanea,* n. 939.

S. R. et U. Inquisitioni relatum est, quod in hac Alma Urbe nonnulli religiosarum communitatum, necnon seminariorum et collegiorum superiores, suorum alumnorum in eadem domo degentium sacramentales excipiant confessiones. Ex quo quanta incommoda, imo quod gravia mala oboriri possint, nemo qui in sacris ministeriis vel mediocriter sit versatus pro comperto non habet. Ex una enim parte minuitur alumnorum peccata confitendi libertas, ipsaque confessionis integritas periclitatur; ex alia vero superiores minus liberi esse possunt in regimine communitatis, ac suspicioni exponuntur aut se notitiis in confessione habitis uti, aut benevolentiores se praebere erga alumnos, quorum confessiones excipiunt.

"Quapropter ut hisce aliisque malis, quae ex huiusmodi abusu facile oriri queunt, occurratur, Suprema haec S. Officii Congregatio, de expresso Sanctissimi D. N. Leonis P.P. XIII mandato, districte prohibet, ne ullus cuiusquam religiosae communitatis aut seminarii aut collegii superior, sive maior sive minor, in hac Alma Urbe (excepto aliquo raro necessitatis casu, de quo eius conscientia oneratur) suorum alumnorum in eadem domo manentium sacramentales confessiones audire ullo pacto audeat." [5]

The decree gives as reasons for the above-quoted regulation: (1) the safeguarding of the liberty of

[5] *Monitore Ecclesiastico,* XI (1899), 202.

conscience of the subordinates and (2) the freedom of the superiors in the external government of their houses; in other words, Leo XIII wished to take every precaution against the danger that the superiors would use knowledge obtained through confession in the government of their subjects and that the latter would be deterred from making a candid confession by the dread of such use.

According to its wording the decree obliges only in the City of Rome;[6] however, since the motives for the ordinance are general, and the contrary practice is positively declared to be an abuse, the observance of the decree in all similar institutions outside of Rome appeared to be in conformity with the intentions of the Holy See. The Code of Canon Law extends it, with some minor modifications, to the universal Church. Canon 891 reads: "The master of novices and his *socius,* the director of a seminary or college, should not hear the confessions of their subjects who live together with them in the same house, unless the subjects themselves, for a grave and urgent reason, and in particular cases, spontaneously ask for it." The prohibition extends only to the persons mentioned in the canon, hence, besides the master of novices and his aids, affects only the im-

[6] The regulars were not bound by the above decree (S. Off., 22–25, Aug., 1899); the religious Congregations in Rome, however, were obliged to observe it (S. Off., 20–22 Dec., 1899). Cfr. *Monitore Ecclesiast.,* XI (1899), 289, 485.

mediate superior or director of the house, the seminary or the college, and merely in regard to those students who live together with them in the same house; the externes do not come under this prohibition.[7] Though the canon admits of exceptions in particular cases, it is not permitted to go to confession regularly to the persons named, although such confessions would be valid.

An ordinance very similar to this is contained in can. 518, § 2 sq. for the superiors of religious communities. Whenever these superiors have the faculty to hear confessions, they may hear the confessions of those of their subjects—professors, novices, postulants, or resident inmates (can. 514, § 1)—who ask for it voluntarily and of their own accord; but even these they should not hear regularly except for very grave reasons. Moreover, a superior must abstain from inducing by force, threats or urgent entreaty, personally or through others, a subject to go to confession to him.

The primary object of these ordinances is to safeguard liberty of conscience; a further purpose is to

[7] Cfr. Vermeersch-Creusen, *Epitome Iuris Canonici,* II (1922), n. 170; A. Blat, *Commentarium Textus Codicis Iuris Can.,* III (Romae, 1920), p. 253. Leitner, *Handbuch des kath. Kirchenrecht's,* III (Regensburg, 1919), 327, thinks that the above ruling applies also to the vice-rectors, prefects, subrectors, and assistants in seminaries, which, he says, is indicated by the expression "master of novices and *his assistants.*" I cannot agree with him.

prevent any misuse of the sacramental knowledge by superiors.

Canon 890 expressly treats of the use of knowledge gained from confession. This canon re-enacts essentially the ordinances of Clement VIII, of May 26, 1593, and those of the Holy Office, of Nov. 18, 1682. In § 1 we read: "The confessor is strictly forbidden to make use of the knowledge gained from confession, if this use involves injury (*gravamen*) to the penitent, even though the seal of confession is not endangered." There is always a *"gravamen poenitentis"* when the penitent is unfavorably impressed, or at least would be if he knew the facts.[8] § 2 ordains: "Superiors, who are actually such at the time, as well as confessors, who afterwards become superiors, are not allowed to make use of knowledge gained from confession for the external government of their subjects." The Code therefore includes not only religious superiors, but also all other ecclesiastical superiors in this prohibition.

An instruction issued by the Holy Office on June 9, 1915,[9] to all ordinaries and religious superiors extends in part beyond the former ordinances, but as a matter of fact contains only logical deduc-

[8] A. Vermeersch, *Theologia Moralis,* III (Brugis, 1923), n. 519. Cfr. V. Coucke, *De Sigillo et Usu Scientiae Sacramentalis* (*Collationes Brugenses,* XXV (1925), 384–92).

[9] *Monitore Eccles.,* XXIX (1917), 199 ff.; contains an explanation of the decree; cfr. also *Theologisch-prakt. Quartalschrift,* LXXV (Linz, 1922), 198 ff.

tions from them. This is the reason why it is placed at the end of this chapter. The Holy Office complains that there are some confessors who do not hesitate to speak about what they have heard in confession, in private conversation as well as in sermons—for the edification of the people, as they say. However, since in such an important matter we must not only carefully avoid open wrong, but even the very appearance or suspicion of injury, the reprehensibility of this practice is quite clear. The hearers will take offence at such conduct and be filled with distrust, which is diametrically opposed to the nature of the Sacrament. Therefore the Holy Office feels in duty bound to charge all bishops and religious superiors (*graviter onerata eorum conscientia*) effectually to abolish such abuses wherever they may have crept in. They must, moreover, carefully instruct the clergy by private and public lectures not to touch upon matters heard in sacramental confession, especially during missions and spiritual retreats, either in public or private conversation, no matter in what form or under what pretext this is done, nor by direct or indirect insinuations,—except when they must ask for advice, which may be done according to the rules laid down by approved authors. They must also examine candidates for confessorship especially on this point.

In case anyone violates these ordinances, the bishops and religious superiors must urgently reprimand

him, and in case of repetition, impose condign punishment, and in especially severe violations the matter must be referred to the Holy Office.[10]

[10] *Instructio ad Reverendissimos Locorum Ordinarios Familiarumque Religiosarum Moderatores super Inviolabili Sanctitate Sigilli Sacramentalis: Naturalem et divinam sigilli sacramentalis legem in Ecclesia Christi semper et ubique sanctissime servatam fuisse, ne ipsi quidem confessionis sacramentalis acriores hostes in dubium unquam revocare serio potuerunt. Idque providentissimo Dei consilio absque ulla dubitatione tribuendum est, qui, sacramentalem confessionem veluti secundam post naufragium deperditae gratiae tabulam hominibus misericorditer offerens, omnem aversationis causam ab ea dignatus est amovere.*

Non desunt nihilominus quandoque salutaris hujus sacramenti administri qui, reticitis quamquam omnibus quae poenitentis personam quomodocunque prodere queant, de submissis in sacramentali confessione clavium potestate, sive in privatis collocutionibus sive in publicis ad populum concionibus (ad auditorum, ut aiunt, aedificationem) temere sermonem facere non vereantur. Cum autem in re tanti ponderis et momenti nedum perfectam et consummatam iniuriam sed et omnem iniuriae speciem et suspicionem studiosissime vitari oporteat, palam est omnibus quam mos huiusmodi sit improbandus. Nam etsi id fiat salvo substantialiter secreto sacramentali, pias tamen audientium aures haud offendere et diffidentiam in eorum animis haud excitare sane non potest. Quod quidem ab huius sacramenti natura prorsus est alienum, quo clementissimus Deus, quae per fragilitatem humanae conversationis peccata commisimus, misericordissimae suae pietatis venia penitus abstergit atque omnino obliviscitur.

Haec animo reputans Suprema haec Sacra Congregatio Sancti Officii muneris sui esse ducit omnibus locorum Ordinariis Ordinumque Regularium et quorumcumque Religiosorum Institutorum superioribus, graviter onerata eorum conscientia, in Domino praecipere ut huiusmodi abusus, si quos alicubi de-

The form in which it is presented shows that this instruction is not merely directive, but a rule of the strictest obligation, imposed primarily upon bishops and religious superiors, but obliging also the confessors subject to them. The ordinance is a positive law, which certainly exceeds the limits of the Seal of Confession, but is based on the nature of the Sacrament of Penance, in as much as everything which might deter the faithful from receiving it, must be eliminated. To this belongs to a certain extent also the use of confessional knowledge condemned by the Holy Office. There can, therefore, be

prehendant, prompte atque efficaciter coercere satagant; utque in posterum tam in scholis theologicis quam in casus moralis quas vocant, conferentiis et in publicis et in privatis ad clerum allocutionibus et adhortationibus sacerdotes sibi subditos sedulo edoceri curent, ne quid unquam, occasione praesertim Sacrarum missionum et exercitiorum spiritualium, ad confessionis sacramentalis materiam pertinens quavis sub forma et quovis sub praetextu, ne obiter quidem et nec directe neque indirecte (excepto casu nécessariae consultationis iuxta regulas a probatis auctoribus traditas proponendae) in suis publicis seu privatis sermonibus attingere audeant; eosque in experimentis pro eorum habilitatione ad confessiones excipiendas hac super re peculiariter examinari iubeant.

Sacra Congregatio confidit neminem ex confessariis huiusmodi praescriptionibus contraventurum: quod si secus acciderit, praedicti ordinarii et superiores transgressores graviter moneant, recidivos congruis poenis percellant, ac in casibus gravioribus Supremo huic Sacro Tribunali rem quamprimum deferant. Datum Romae ex Aedibus Sancti Officii die 9. Junii 1915.

R. Card. Merry Del Val.

no doubt that this ordinance continues in force even after the publication of the new Code of Canon law.[11]

§ 3. THE SUBJECT OF THE SEAL

In the older Decretals [1] the obligation of sacramental silence is imposed only on the confessor. This is very conspicuous in the ordinance of the Fourth Lateran Council,[2] where the precept of the Seal is joined directly to the precept of confessing one's sins at least once a year to the *sacerdos proprius,* or, with his permission, to some other priest.

The legitimate confessor is not only he who personally hears the confession of a penitent, but also the superior who, in reserved cases, authorizes others to give absolution. Although the latter is not expressly mentioned in the Decretals, he is nevertheless legally on an equal footing with the actual confessor.[3] In most cases, of course, it will suffice

[11] Cfr. Hoornaert, *Sur le Secret Sacramentel* in the *Nouvelle Revue Théologique,* XLVIII (1921), 164–67, especially 531–33; Vermeersch, *Theol. Moral.,* III, n. 526; Woywod, *A Practical Commentary on the Code of Canon Law,* I (New York, 1925), n. 796.

[1] C. 2, D. VI, *de Paenit.;* c. 12, X (V, 38); *Corp. Iur. Can.,* ed. Friedberg, I, 1244; II, 887 f.

[2] C. 12, X (V, 38); Friedberg, II, 887 f.

[3] Cfr. Hinschius, *Kirchenrecht,* IV, 129 and the article *"La Confession"* by B. Dolhagaray in the *Dictionnaire de Théol. Cathol.,* III (1908), 969.

to ask him for the necessary faculty without mentioning any name. Should he, however, in spite of all precautions, somehow come to know the pentient, he is bound to sacramental silence exactly like the confessor. The same rule holds good if the penitent has consulted him personally or permitted the confessor to give his name. On this point scarcely any doubt has existed among the canonists and theologians.[4]

The question whether a simple priest, who hears confessions without being authorized to do so, is subject to the canonical regulations regarding the Seal, is not expressly treated by the older canonists, but, it may be assumed, tacitly affirmed by all. This is certainly the case when there is question of venial sins or sins already confessed on a previous occasion, for in regard to these, up to the time of Innocent XI, the simple priest without special faculties was looked upon as the legitimate confessor.[5] But when there is question of grievous sins, the positive ordinances of *cap. "Sacerdos"* (c. 2, D. VI, *de Paenit.*) and of *cap. "Omnis"* (c. 12, X, V, 38) do not, in our opinion, apply to such a priest, at least not when

[4] Cfr. L. Ferraris, *Prompta Biblioth., s. v. "Sigillum Sacram. Confessionis,"* n. 12 (VII [Romae, 1891], 196).

[5] Cfr. Chr. Pesch, *Praelectiones Dogmaticae,* tom. VII (Friburgi, 1897), n. 431 ff. For the decree of Innocent XI, *"Cum ad aures,"* of February 12, 1679, by which the above-mentioned practice was forbidden, see L. Ferraris, *Bibliotheca, s. v. "Eucharistia,"* I, n. 41 (III [Romae, 1886] 393).

he deliberately hears confession without authority.[6]

However, if we consider the true purpose and the fundamental reason of the Seal, we see that the obligation of sacramental silence extends farther than is stated in the positive regulations.[7] The nature of the Sacrament of Penance demands, if not with absolute, at least with moral necessity, that the penitent be guaranteed the secrecy of his confession. Hence most canonists and theologians deduce the obligation of the Seal not alone from ecclesiastical law, but also and above all from the divine and the natural law.[8] It follows that, besides the confessor, every other person who, lawfully or unlawfully, knows what has been confessed, is bound to silence, and this not merely by reason of the natural law, but also out of regard for the Sacrament.

Regarding the confessor, the older theologians were in the habit of discussing the question whether

[6] He is plainly not *sacerdos proprius* or *rite delegatus* in the sense of the passage quoted. Cfr. Hinschius, *Kirchenrecht,* IV, 129. A different opinion is held by Schmalzgrueber, *Ius Can.,* V, 38, n. 64, 80 (ed. Neapol., 1738, V, 336 and 338); Jos. Hollweck, *Die kirchl. Strafgesetze* (Mayence, 1899), 332.[2]

[7] Cfr. Hollweck, *Strafgesetze,* 332.[1] Corn. Krieg, *Wissenschaft der speziellen Seelenführung,* I (Freiburg, 1904), 416, pertinently remarks: "Conscience [hence not the Canon Law] obligates all who in any manner come to know what has been confessed, to keep the secrecy of confession inviolate."

[8] S. Thomas, *Comment. in Sent.,* IV, d. 21, qu. 3, art. 1, sol. 2 (*Opp. Omn.,* X [Parisiis, 1889], 598; Duns Scotus, *Comment. in Sent.,* IV, d. 21, qu. 2, resp. (*Opp. Omn.,* XVIII [Parisiis, 1894], 731).

a *layman,* to whom somebody confessed in case of necessity, for want of a priest, would be bound by the Seal of Confession. From the beginning of the 11th century [9] we encounter the view that venial sins, and, in case of urgent necessity, also grievous sins, may be confessed to a layman. A scientific argument for this view was attempted about the middle of the 11th century by the author of the pseudo-Augustinian treatise *De Vera et Falsa Paenitentia,*[10] and when Gratian,[11] following this opinion, recommended lay-confession as a substitute for sacramental confession in cases of necessity, the custom became widespread after the middle of the 12th century. Peter Lombard [12] and Huguccio [13] went so far as to make it obligatory to confess to laymen when

[9] Sporadically St. Bede (Migne, *P.L.,* XCIII, 40) and Jonas of Orleans (Migne, *P.L.,* CVI, 152) declared lay-confession admissible in case of venial sins. Cfr., however, Gromer, *Die Laienbeichte im Mittelalter,* München, 1909, 11.[2]

[10] Migne, *P.L.,* XL, 1113–1130. Regarding the latest literature on this work, cfr. Schmoll, *Die Busslehre der Frühscholastik,* München, 1909, 9[3]; Gromer, *l. c.,* 13 f.; Gillmann (*Katholik,* 1909, I, 435 ff.; 1910, I, 318 f.).

[11] C. 36, D. IV, *de Cons.;* c. 88, D. I, *de Paenit.;* c. 1, D. VI, *de Paen.;* cfr. Gromer, *l. c.,* 16.

[12] *Sentent.,* l. IV, d. 17, pars 3, cap. 4 (ed. Quaracchi, IV [1889], 416–417).

[13] Ad c. 1, D. VI, *de Paen.: "Ecce hic videtur Augustinus laudare qui confitetur peccata sua laico, cum non potest habere copiam sacerdotis. Sed numquid tenetur ad hoc? Credo quod sic; nec videtur vere paenitens, qui in articulo mortis non confitetur peccata sua cuicumque potest, si sacerdos haberi non potest."* Cfr. Gromer, *l. c.,* 31[1].

no priest could be had; nay, Albert the Great [14] attributed a quasi-sacramental character to such a confession, whilst St. Thomas designates it as *"quoddam sacramentale."* [15] This view was opposed by the Franciscan school. Alexander of Hales [16] and St. Bonaventure [17] viewed confession to a layman merely as an exercise of humility and denied that it possessed a sacramental character; and hence refused to admit such an obligation. Duns Scotus directly opposes the practice, which he believes to be in some cases more injurious than beneficial.[18] Though the teaching of the Franciscans on this

[14] *Comment. in Sent.,* IV, d. 17, art. 59 (*Opera Omn.,* XXIX [Parisiis, 1894], 755); cfr. Gromer, *l. c.,* 38 ff.; Leitner, *Eherecht,*[3] 1920, p. 172.

[15] *Comment. in Sent.,* IV, d. 17, qu. 3, art. 3, sol. 3: *"Confessio laico facta sacramentale quoddam est";* and sol. 2: *"Confessio laico facta . . . sacramentalis est quodammodo."*

[16] *Summa Theologica,* IV, qu. 19, membr. 1, art. 1, resol.: *"Tametsi laico confiteri interdum iuvat: sacramentaliter tamen confiteri non nisi sacerdotibus possumus."* (Ed. Colon., 1622, IV, 596; Gromer, *l. c.,* 47 f.); A. Teetaert, *Doctrine d'Alexandre d'Alès* (*Études Franciscains,* 1925, 382).

[17] *Comment. in Sent.,* IV, d. 17, pars 3, art. 1, qu. 1 (ed. Quaracchi, IV [1889], 451; Gromer, *l. c.,* 49 f.).

[18] *Comment. in Sent.,* IV, d. 14, qu. 4: *"Nihil pertinens ad sacramentum paenitentiae potest a laico dispensari . . . et ideo confessio . . . facta laico, nihil valet virtute operis operati et adhuc dubium est, an sit in detrimentum salutis."* (*Opera Omnia,* XVIII [Paris., 1894], 155), and dist. 17, qu. un.: *"Viro discreto, qui bene sciret ad quid confessio est instituta nec forte utile foret nec necessarium talem confessionem facere."* (*Ibid.,* 564).

head was generally received after 1300, the practice of confessing to laymen continued until well into the sixteenth century. Some councils and theologians recommended it as profitable and wholesome in cases of necessity, and well-known examples give evidence of its existence.[19] It was Luther's doctrine of the universal priesthood, which implied that confession to a layman was of equal value with confession to a priest, which led to the final abolition of the practice.[20]

What position did the canonists and theologians take with regard to the obligation of silence on the part of a lay-confessor? Innocent IV writes in his celebrated Commentary on the Decretals of Gregory IX: "I hold that in those cases in which venial or even grievous sins are confessed to a layman, the latter acts as minister of God and, therefore, must behave in this matter (*i. e.*, in regard to the Seal) exactly like a priest." [21]

St. Thomas is more lenient. The Seal, he says, like the power of the keys, properly belongs to the priest as the minister of the Sacrament. However,

[19] Cfr. Gromer, *l. c.*, 55 ff.; Koeniger, *Die Beicht nach Caesar v. Heisterbach*, 79 ff.

[20] Cfr. Gromer, *l. c.*, 86.

[21] *Apparatus in V L. Decretalium*, tit. 38, c. *Omnis* (12): *"Credo tamen, quod si etiam laico de venialibus vel etiam de criminalibus in casibus, ubi licet, quis confiteatur laico, quod in hoc minister Dei est et ideo ista et alia facere debet ut sacerdos"* (ed. Lugd., 1554, 207).

since in case of necessity a layman who hears confession actually participates after a fashion in the power of the keys, he also incurs the obligation of the Seal.[22]

The teaching of St. Thomas was followed by John of Freiburg,[23] Albert of Brescia,[24] Astesanus,[25] Bartholomew of Pisa,[26] Peter de Palude,[27] and St. Antoninus,[28] and found defenders until well into the 16th century. Thus Panormitanus writes in his *Lectura* on *Caput "Omnis"* that whenever, in a case of necessity, confession has been made to a layman instead of to a priest, he is bound to silence under pain of punishment and must not give testimony in court.[29]

[22] *Comment. in Sent.*, IV, d. 21, qu. 3, art. 1, sol. 3: *"Sigillum confessionis competit sacerdoti in quantum est minister huius sacramenti. . . . Tamen sicut aliquis qui non est sacerdos in aliquo casu participat aliquid de actu clavis dum confessionem audit propter necessitatem: ita participat de actu sigilli confessionis et tenetur celare, quamvis proprie loquendo sigillum confessionis non habeat."* (*Opp. Omn.*, X [1889], 597).

[23] *Summa Confessorum*, l. III, tit. 34, qu. 97 (ed. Lugd., 1518, 194 a).

[24] *Summa Casuum*, pars III, c. 4 (Clm. 18407, fol. 143^{v} b).

[25] *Summa de Casibus*, l. V, tit. 20 (Norimbergae, 1482, fol. 94^{v} a). Cfr. also Gromer, *l. c.*, 73.

[26] *Summa, s. v. "Confess. Celatio,"* n. 8 (ed. *s. l.*, 1475, fol. 28 b).

[27] *Comment. in Sent.*, IV, d. 21, qu. 3, art. 1, concl. 2 (Parisiis, 1514, fol. 114^{v} b).

[28] *Summula*, III, § 8 (ed. Venet., 1499, fol. 39 b).

[29] *Lectura*, l. V, tit. 38, c. *"Omnis"* (12): *"Et quod dixi de laico intellege quod laico non dicitur aliquid in paenitentia nisi*

The same view is met with in the penitential *Summae* of Angelus Carletus (about 1470),[30] John Baptist de Salvis (about 1480),[31] John Cagnazzo (about 1512),[32] and Sylvester Prierias (1515).[33] To these may be added Hadrian of Utrecht (+ 1523)[34] and Bartholomew Fumus (+ 1545).[35] The last-mentioned author writes in his widely read *Summa Aurea Armilla:* "When a layman, in case of necessity, hears confession, he is bound to silence in the same way as the priest, although the confession is not sacramental because the power of absolution is lacking."

As late as the close of the 16th century Navarrus still adheres to this opinion.[36]

assumatur loco sacerdotis in necessitate et fiat ei vera confessio sicut sacerdoti; tunc enim non debet revelare etiam tamquam testis, alias punietur." (Ed. Lugd., 1555, fol. 177 a).

[30] *Ad verb. "Confessio," ultimo,* n. 19 (Venetiis, 1578, 235 a).

[31] *Summa Rosella, s. v. "Confess. Celatio,"* n. 15 (Norimbergae, 1488, fol. 41 a).

[32] *Summa Tabiena, s. v. "Confess. Celatio,"* n. 15 (Venetiis, 1569).

[33] *Ad verb. "Confessor,"* n. 1 (Venetiis, 1572, p. 294).

[34] *Quaestiones in IV. L. Sent., De Sacram. Confess.* (Paris, 1528, fol. 92 a).

[35] *Summa Aurea Armilla, s. v. "Confessor,"* n. 8 (ed. Lugd., 1595, 224). Cfr. Gromer, *l. c.,* 83.

[36] *Comment. in VII distinct. de Paenit.,* c. *Sacerdos,* n. 42: *"Ex quo infertur, quod non solum sacerdos cui fit confessio et laicus cui propter necessitatem aliquis confitetur . . . confessionem tenetur celare."* (*Opp. Omn.,* I [ed. Venet., 1601] 346 ᵛ a).

However, after the middle of the 16th century the opinion that a lay-confessor is bound to *natural,* but not sacramental silence became prevalent. Thus Dominic de Soto (+ 1560) expressly declares that, in as much as a confession made to a layman is in no wise a sacrament, there cannot be any sacrilege if the matter is revealed.[37]

Only here and there we still encounter the opinion that the lay-confessor is bound to the Seal at least with regard to those penitents who, out of ignorance, imagine that such a confession is sacramental.[38] The majority of theologians agree with Suarez [39] in holding that a confession made knowingly to a layman does not impose the obligation of sacramental silence.

This naturally leads to the further question, whether the obligation of the Seal arises if some one confesses his sins in good faith to a layman whom he believes to be a priest. Most theologians answer

[37] *Comment. in Sent.,* IV, d. 18, qu. 4, art. 1: *"Quia cum illud non sit sacramentum, fit ut nec revelatio sit sacrilega."* (Ed. Lovan., 1573, 500).

[38] G. Gobat, *Clypeus Confessariorum,* c. 22, n. 783 (*Opp. Omn.,* tom. I, pars 1 [Duaci, 1701], 597).

[39] *De Sacrament. Paenit.,* disp. 33, sect. 2, n. 2 (*Opp. Omn.,* XXII [Parisiis, 1866], 691); cfr. Bonacina, *De Sacram. Paenit.,* disp. 6, qu. 6, sect. 5, punct. 2 (*Opp. Omn.,* tom. I [Antverp., 1643], 148; Tamburini, *Methodus Expeditae Confessionis,* l. V, c. 4, § 5 (Coloniae, 1657, 422); De Lugo, *De Paenit. Sacram.,* disp. 23, sect. 2, n. 41 (ed. Paris., V [1893], 367).

this question in the affirmative. Thus St. Thomas,[40] Albert of Brescia,[41] Paludanus,[42] Antoninus,[43] Hadrian of Utrecht,[44] the *Summa Tabiena,*[45] Navarrus,[46] Vasquez,[47] Laymann,[48] Sylvius,[49] Diana,[50] Cardinal de Lugo,[51] the Salmanticenses,[52] Tamburini,[53] Reiffenstuel,[54] Clericatus,[55] Schmalzgrue-

[40] *Comment. in Sent.,* IV, d. 21, qu. 3, art. 1, sol. 3 (*Opp. Omn.,* X [Romae, 1889], 598).

[41] *Summa Casuum,* pars III, c. 4 (Clm. 18407 [*saec. XV*], fol. 143^{v} a).

[42] *Comment. in Sent.,* IV, d. 21, qu. 3, art. 1 (Parisiis, 1514, fol. 114^{v} b).

[43] *Confessionale,* pars III, § 8 (Venetiis, 1499, fol. 39^{v} a).

[44] *Quaestiones in IV. L. Sent., De Sacram. Confess.* (Parisiis, 1528, fol. 92 a).

[45] *Verb. Conf. Celatio,* n. 14 (ed. Venet., 1569).

[46] *In cap. Sacerdos,* n. 42 (*Opp. Omn.,* I [Venetiis, 1601], fol. 346^{v} a).

[47] *In Summam S. Thom.,* III, qu. 98, art. 4, dub. 2, n. 4 (*Opp. Omn.,* IV [Antverp., 1616] 333).

[48] *Theol. Moralis,* l. V, tract. 6, c. 14, n. 17 (Bambergae, 1677, 412)

[49] *In Summam S. Thom.,* III, qu. 2 (Antverp., 1714, IV, 529).

[50] *Resolut. Morales,* tract. 11, resolut. 11 (ed. Antverp., 1640, V, 345).

[51] *De Sacram. Paenit.,* disp. 23, sect. 2 (*Opp. Omn.,* V [Parisiis, 1893], 361).

[52] *Cursus Theol., De Sacram. Paenit.,* disp. 9, dub. 5 (XX [Paris., 1883], 566).

[53] *Methodus Expeditae Confessionis,* l. V, c. 4 (Coloniae, 1657, 415).

[54] *Theol. Moral.,* tract. 14, dist. 9, qu. 3, n. 36 (Monach., 1726, II, 1059).

[55] *Decisiones,* decis. 49, n. 6 (August. Vind., 1730, I, 207).

zer,[56] and Ferraris.[57] These writers give as reason for their opinion that such a confession is sacramental on the part of the penitent and the latter therefore has a just claim to secrecy, otherwise the faithful would be deterred from receiving the Sacrament of Penance.

Only a few theologians assume merely a natural obligation of silence in the case under discussion; thus Dominic de Soto,[58] Toletus,[59] Martin Becanus,[60] and Tanner,[61] whilst the rest either simply place the fictitious on a par with the genuine confessor, or admit a difference only in *degree,* but not in *kind,* of obligation.[62]

However, after an objective examination of the question no other obligation can be proved than that of natural silence. The mistake or good faith of the penitent does not alter the fact that his con-

[56] *Ius Can.,* l. V, tit. 38, n. 64 (Neapoli, 1738, V, 336).

[57] *Biblioth., s. v. "Sacram. Confess.,"* n. 7 (VII [Romae, 1891], 195).

[58] *Comment. in Sent.,* IV, d. 18, qu. 4, art. 5 (Lovanii, 1573, 513).

[59] *Instructio Sacerdotum,* l. III, c. 16, n. 7 (Coloniae, 1621, 364).

[60] *De Sacramentis in Specie,* c. 39 (*Opp. Omn.,* I [Mogunt., 1630], 868).

[61] Disp., VI, qu. 9, dub. 6, n. 133 (*Theol. Schol.,* IV [Ingolst., 1627], 1743).

[62] H. Henriquez, *Theol. Moral.,* l. III, c. 20 n. 1: *"Alii, interpres, fingens se sacerdotem . . . tenentur quidem arctissimo et inviolabili secreto, sed ita ut poenas canonicas non incurrant."* (Mogunt., 1613, 305 f.).

fession in itself is not sacramental, because not made to a priest.[63]

Besides the persons mentioned, there are others who may have obtained sacramental knowledge, *i. e.*, a knowledge which has its origin in the sacramental accusation of the penitent. There is first of all the interpreter whom the confessor or the penitent makes use of on account of ignorance of the language; then the adviser whom the confessor consults in difficult cases, with or without the permission of the penitent; furthermore, all those who accidentally or intentionally hear the confession of the penitent; finally, all those to whom the confessor has lawfully or unlawfully communicated knowledge obtained in confession.

Since the canonists and theologians deduce the obligation of silence in the above cases from the same principle, it will suffice to treat them all together.

St. Thomas is of the opinion that, besides the confessor, all those share in the obligation of silence who are in some necessary manner connected with the confession, as, *e. g.*, the interpreter.[64] The Angelic Doctor expressly extends this obligation to

[63] Cfr. John de Lugo, *De Sacram. Paenit.*, disp. 23, sect. 2, n. 41 (*Opp. Omn.*, V [Paris, 1893], 367); J. Hollweck, *Strafgesetze*, 332 [2]; Vermeersch, *Theol. Moral.*, III, p. 410.

[64] *Comment. in Sent.*, IV, d. 21, qu. 3, art. 1, sol. 3.

those to whom the confessor, with the permission of the penitent, has communicated confessed matter, provided the permission was not unrestricted.[65] The reason he gives is that these persons supplement the action of the priest and hence share in his obligation of silence.[66]

With this view later theologians and canonists agree essentially until well into the 16th century, though the enumeration of the persons bound by the Seal differs somewhat in individual writers.[67] All deduce the obligation of silence from the intimate relation existing between these persons, or rather their knowledge, and the sacramental confession of the

[65] *Ibid.*, art. 2, ad 4 (*Opp. Omn.*, X [Romae, 1889], 599).

[66] *Ibid.*, d. 21, qu. 3, art. 1, sol. 3: *"Sicut aliquis, qui non est sacerdos, in aliquo casu participat aliquid de actu clavis dum confessionem audit propter necessitatem, ita etiam participat de actu sigilli confessionis."* (*Opp. Omn.*, X [Romae, 1889], 598).

[67] Joh. Friburg., *Summa Confessorum*, l. III, tit. 34 (Lugduni, 1518, fol. 194 a); Duns Scotus, *Comment. in Sent.*, IV, dist. 21, qu. 2, concl. 4 (*Opp. Omn.*, XVIII [Paris, 1894], 740); *Summa Astesana*, l. V, tit. 20 (Norimbergae, 1482, fol. 94^{v} a); Barthol. à S. Concordio, *Summa Casuum, s. v. Confess. Celatio*, n. 8 (ed. s. l., 1475, fol. 28 b); Nicol. ab Ausmo, *Supplementum s. v. Conf. Celatio* (Venetiis, 1489, fol. 43^{v} b); John de Salvis, *Summa Rosella, s. v. Conf. Celatio*, n. 15 (Norimb., 1488, fol. 41 a); Angelus de Clavasio, *Summa Angelica, s. v. Conf.*, ultimo, n. 19 (Venetiis, 1578, fol. 235 a); *Summa Tabiena, s. v. Conf. Celatio*, n. 15 (Venetiis, 1569); Sylvester Prierias, *Summa Sylvestrina, s. v. Confessio*, III°, n. 1 (Venetiis 1572, fol. 288 a); Hadrian VI, *Quaestiones in IV L. Sent., De Sacram. Conf.* (Parisiis, 1528, fol. 92).

penitent. St. Thomas[68] and Richard of Middletown,[69] however, allude to a difference existing between the obligation of the confessor and that of the other persons, while Peter de Palude[70] and St. Antoninus[71] view the obligation of silence as something inherent in the sacramental knowledge, so that all who obtain this knowledge are bound in like manner to silence.

Cardinal Thomas de Vio (Cajetan) is the first writer to advocate the view that while the interpreter is bound to strict silence, he is not bound by the Seal of Confession.[72] Dominic de Soto shares this view and seems to extend also to the other persons a merely natural obligation of silence.[73]

Navarrus,[74] on the other hand, endeavors to prove

[68] *Comment. in Sent.,* IV, dist. 21, qu. 3, art. 1, sol. 3 (*Opp. Omn.,* X [Paris, 1889], 598).

[69] *In IV L. Sent.,* dist. 21, art. 5, qu. 1 (Brixiae, 1656, IV, 345).

[70] *In IV L. Sent.,* 21, qu. 3, art. 1, concl. 2 (Paris, 1514, fol. 114 a).

[71] *Confessionale,* pars III, § 8 (Venetiis, 1499, fol. 39 b sq.).

[72] *Summula, s. v. "Confessio,"* 11 [0] (Lugduni, 1581, 75).

[73] *Comment. in Sent.,* IV, d. 18, qu. 4, art. 5 (Lovanii, 1573, 513).

[74] *In Cap. Sacerdos,* n. 42 ff.: "*. . . non solum sacerdos, cui fit confessio, et laicus, cui propter necessitatem aliquis confitetur . . . et interpres per quem linguae ignarus confitetur sacerdoti, confessionem tenetur celare, sed etiam is qui casu vel astutia alicuius confessionem audivit, item is cui causa consilii petendi revelata est, quin etiam is cui causa detrahendi et infamandi confessum panderetur. Pro quibus omnibus facit*

that all who in any manner obtain knowledge of matter avowed in sacramental confession, are strictly bound by the Seal. Like Paludanus before him, Navarrus regards the Seal as an obligation attached to sacramental confession, for the reason that the divine law tacitly given together with the institution of Penance does not say that the *priest* must not reveal the confession, but a sacramental *confession* must not be revealed to anyone. The obligation of the Seal does not, therefore, primarily inhere in the person, but in the object, *i. e.*, in the confession.[75] As soon as a sacramental confession takes place, therefore, the obligation of unconditional silence follows at once for all who may obtain a knowledge of the sins confessed. From this principle Navarrus concludes that not only the confessor (or, in case of necessity, the layman) who hears a confession, as well as the interpreter are bound by the Seal, but also those who hear the confession accidentally or by

quod res ad quemcumque transit, cum onere suo transit (cap. ex litteris, de pignori. capitul. pastoralis de decimis, leg. 2 et 3 C. In quibus causis pignus tacit. contr.-l. 2 et 3 C viii, 15) et confessio simul ac facta est ita, ut forman habeat sacramentalis, habet illud onus annexum quo taceri debeat omnino et sileri; ergo ad quemcumque perveniat cum onere suo pervenit." (*Opp. Omn.*, I [Venetiis, 1601], fol. 346 v a).

[75] *Ibid.*, n. 46: ". . . *Lex illa divina, quae tacite colligitur ex confessionis institutione, non continet illud, sc. ne sacerdos eam revelet; sed ne ulli reveletur alicuius confessio sacramentalis, ita ut obligatio secreti servandi non in personam primarie cadat, sed in rem ipsam, sc. confessionem.*" (*l. c.*, fol. 346 v b).

design; furthermore, the adviser and, finally, he to whom the confession is maliciously revealed. While the *Cap. "Sacerdos"* and the *Cap. "Omnis"* mention only the priest, because the opportunity of violating the Seal presents itself more frequently to him than to others, who seldom find out what has been confessed; it may, however, be conceded that these two canons, in so far as they represent human law, refer only to the confessor and make him alone liable to canonical penalties; but in so far as they contain a positive divine law, these canons bind everyone who obtains a knowledge of matter confessed, though no definite penalty is assigned to the transgression.[76]

Like Navarrus, Gabriel Vasquez, too, rejects as utterly false the opinion of Thomas de Vio and Dominic de Soto, that the interpreter is bound only by natural silence. If such a person, he says, reveals what is confided to him, he sins against the Sacrament and against that positive command of Christ to which Vasquez traces the Seal. The same rule, in his opinion, applies to everyone who accidentally or purposely hears the confession of another, or to whom it is unlawfully communicated. The adviser alone is bound to secrecy by a merely natural silence, if the penitent had previously given his permission.[77]

[76] *L. c.*, n. 47 ff.

[77] *Comment. in S. Thom.*, III, qu. 93, art. 4, dub. 2, n. 2: *"Ceteri doctores absolute docent teneri* [*sc. interpretem*] *sicut*

Suarez does not, like Vasquez, base the Seal on a special commandment of Christ, but deduces it from the nature of the Sacrament of Penance.[78] However, he, too, lays down the principle that all knowledge obtained through confession, whether directly or indirectly, is subject to the Seal.[79]

Among the later canonists and theologians there are but few who deviate from this principle, *e. g.*, Martin Becanus (+ 1624), who subjects all except the confessor solely to the natural obligation of silence.[80] The same opinion is held by Adam Tanner (+ 1632).[81]

sacerdotem; et Petrus de Soto expresse docet interpretem teneri ad idem sacramentum et Navarrus non tantum sigillo secreti sed confessionis. Quod existimo esse verissimum, imo doctrinam Soti et Caietani omnino falsam. . . . Imo interpres non tantum tenetur praecepto religionis ob reverentiam sacramenti, praecepto inquam, quod sequitur naturaliter ex ipso institutione sacramenti, sed etiam positivo praecepto, quod diximus voluntate Christi superadditum institutioni, quia in omnibus casibus tenetur servare in quibus sacerdos." (*Opp. Omn.*, IV [Antverp., 1616], 331 ff.).

[78] *De Sacram. Paenit.*, disp. 33, sect. 1, n. 10 (*Opp. Omn.*, XXII [Parisiis, 1866], 689).

[79] *L. c.*, sect. 4, n. 4, p. 698.

[80] *De Sacramentis in Specie*, c. 39: "*. . . confessarius strictissime tenetur iure naturali, divino et humano. Reliqui non tenentur nisi solo iure naturali; cum apud eos non sit confessio sacramentalis.*" (*Opp. Omn.*, I [Mogunt., 1630], 868).

[81] *Theol. Scholast., De Sacram. Paenit.*, disp. 6, qu. 9, dub. 6, n. 133 (Ingolst., 1627, IV, 1743).

These isolated exceptions were, however, not able to supplant the universal opinion espoused by men like Estius,[82] Reginald,[83] Filliucci,[84] Laymann,[85] Bonacina,[86] Sylvius,[87] Diana,[88] Fagundez,[89] Cardinal de Lugo,[90] Tamburini,[91] Gobat,[92] the Salmanticenses,[93] Reiffenstuel,[94] Clericatus,[95] Alexander Na-

[82] *Comment. in S. Thom.,* l. IV, d. 17, n. 6 (Parisiis, 1662, II, 234).

[83] *Praxis Fori Paenitentialis,* l. III, c. 3, n. 25 (Antverp., 1616, 153).

[84] *Compend. Quaestion. Moral.,* pars I, tract. 7 (Lugduni, 1626, 84).

[85] *Theol. Moral.,* l. V, tract. 6, c. 14, n. 17 (Bamberg., 1677, 412 ff.).

[86] *Opera Moral.,* l. I, disp. 5, qu. 6, sect. 5, punct. 2 (Antverp., 1643, I, 149).

[87] *Comment. in S. Thom.,* III, qu. 11, art. 1 (Antverp., 1714, IV, 532).

[88] *Resolutiones Morales,* tract. XI, resol. 7 (ed. Antverp., 1640, V, 343):

[89] *Quaestiones in V Ecclesiae Praecepta,* l. VI, c. 6, n. 1 ff. (Mogunt., 1628, 460 ff.).

[90] *De Sacram. Paenit.,* disp. 23, sect. 2 (*Opp. Omn.,* V [Paris, 1893], 361 ff.).

[91] *Methodus Expeditae Confessionis,* l. V, c. 4 (Colon., 1657, 415 ff.).

[92] *Alphabetum Confessariorum,* Casus 22, n. 853 (*Opp. Moral.,* tom. I, pars I [Monachii 1683], 842).

[93] *De Sacram. Paenit.,* Disp. 9, dub. 5 (*Cursus Theol.,* XX [Paris., 1883], 563 ff).

[94] *Ius Can.,* l. V, tit. 38, n. 2 (Antverp., 1743, V, 383).

[95] *Decisio* 49, n. 6 (*Decisiones Sacramentales,* I [August. Vindel., 1730], 207).

talis,[96] Schmalzgrueber,[97] Ferraris,[98] Liguori,[99] Phillips,[100] München,[101] Tappehorn,[102] Lorinser,[103] Hollweck,[104] Sägmüller,[105] Noldin,[106] Lehmkuhl,[107] Pruner,[108] Koch,[109] Wernz.[110]

This prevalent view of the theologians and canonists was upon the whole incorporated in the new Code of Canon Law. Can. 889 treats of the obligation of the confessor and then of that of other persons. § 1 reads: "The sacramental seal is inviolable, and hence the confessor shall be most careful not to betray the penitent by any word or sign or in any

[96] *De Sacram. Paenit.*, c. 5, art. 10, regula 61 (*Theol. Dogmat. et Moralis*, II, [Parisiis, 1743], 224).

[97] *Ius Can.*, l. V, tit. 38, n. 63 (Neapoli, 1738, V, 336).

[98] *Bibliotheca s. v. "Sigill. Confess.,"* 7 (VII [Romae 1891]. 195).

[99] *Theologia Moralis*, l. VI, n. 645 (III [Romae, 1909], 665 ff.).

[100] *Lehrbuch des Kirchenrechts*, II [3] (1881), 915.

[101] *Das Kanonische Gerichtsverfahren und Strafrecht*, II [2] (1874), 699.

[102] *Verwaltung des Buszsakramentes*,[4] (Dülmen, 1893), 258.

[103] *Die Lehre von der Verwaltung des heil. Buszsakram.*[2] (Breslau, 1883), 38.

[104] *Die Kirchlichen Strafgesetze* (Mainz, 1899), 334.

[105] *Lehrbuch des kath. Kirchenrechts* (Freiburg, 1904), 440.

[106] *Summa Theologiae Moral.*, III [8] (Oeniponte, 1909), n. 424.

[107] *Theol. Moral.*, II [11] (Friburgi, 1910), n. 595.

[108] *Moraltheologie*, II [3] (Freiburg, 1893), n. 1119.

[109] *Lehrbuch der Moraltheologie*,[2] (Freiburg, 1908), 206; Engl. ed. by A. Preuss, *A Handbook of Moral Theology*, Vol. II, pp. 167 sqq., St. Louis, Mo., 2nd ed., 1919.

[110] *Ius Decretalium*, VI (Prati, 1913), n. 465.

other way for any reason whatsoever." As the wording shows, this ordinance follows closely the IVth Lateran Council, adding only the words: *"et quavis de causa,"* in order to leave no room for doubt that no reason, however grave or important, releases the confessor from this duty. § 2 continues: "The obligation of keeping the sacramental seal binds also interpreters and all other persons who may in any way have acquired a knowledge of confession."

There remains only the question: What is the difference between the obligation of the confessor and those of other persons who may have knowledge of matter revealed in confession? Already the older theologians and canonists recognized a difference here. All admitted that only priests were subject to the penalties imposed in *cap. "Omnis,"* a fact which, so far as removal from office is concerned, follows from the very nature of things. Moreover, many of these writers, following St. Thomas, insist on the fact that the Seal, in its proper and complete sense, concerns solely the confessor, because he alone is the minister of the Sacrament. Thus St. Thomas,[111] John of Freiburg,[112] Albert of Bres-

[111] *Comment. in Sent.*, IV, d. 21, qu. 3, art. 1, sol. 3 (*Opp. Omn.*, X [Romae, 1889], 598).

[112] *Summa Confessorum*, l. III, tit. 34, qu. 97 (Lugd., 1518, fol. 194 a).

cia,[113] Astesanus, [114] Bartholomew of Pisa, [115] Nicholas of Osimo,[116] Henriquez,[117] and others. For the confessor, therefore, the Seal is an official duty, or, as Laymann [118] expresses it, he is bound by it *principaliter et primarie:* all other persons are bound only *minus principaliter et secundarie.* For the confessor the obligation of silence is based chiefly on the *divine* law, for the others it rests primarily on the *natural* law, to which must be added, in the second place, respect for the Sacrament. It is this phase, in contradistinction to the merely natural obligation, which those canonists wish to emphasize who hold that the persons mentioned are bound to the same silence as the confessor; but they do not intend, according to Gregory of Valencia, to indicate the *degree* of the obligation.[119]

Navarrus, in pointing out that the Seal is an actual

[113] *Summa,* pars III, c. 4 (Clm. 18407, fol. 143ᵛ b).

[114] *Summa,* l. V, tit. 20 (Norimb., 1482, fol. 94ᵛ b).

[115] *Summa s. verb. "Confessionis Celatio,"* n. 8 (Ed. *s. l.,* 1475, fol. 28 b).

[116] *Supplementum s. verb. "Confessionis Celatio"* (Venetiis, 1489, fol. 92ᵛ b).

[117] *Theol. Moralis,* l. VI, c. 20, n. 1 (Mogunt., 1613, 305 ff.).

[118] *Theol. Moral.,* l. V, tract. 6, c. 14, n. 17 (Bambergae, 1677, 412).

[119] *Commentarii Theologorum,* tom. IV, disp. 7, qu. 13 punct. 2: *"Tenentur tales servare secretum propter sanctitatem ipsius sacramenti ut praeceptum virtutis religionis ita, ut absolute quidem sacrilegii peccatum ii etiam committant, si faciant contra id praeceptum: tametsi non tam magnum sacrilegium id erit*

obligation inherent in the confession, makes an assumption that is justified only to a certain extent. For the real *raison d'être* of the Seal is the safeguarding of the penitent and thereby also of the Sacrament of Penance. Now, whilst the revelation of a confession on the part of the confessor would surely imperil the Sacrament, this is hardly to be apprehended of a like revelation on the part of other persons concerned. At any rate, respect for the Sacrament in the latter case is a consideration which makes the obligation of silence *very much more stringent,* and a violation thereof would not only be an offence against justice, but in a certain sense also a *sacrilege.*[120]

Although the Code of Canon Law apparently imposes sacramental silence equally on the confessor and the other persons concerned, nevertheless the distinction made by former theologians still remains valid. This is expressed in the Code itself when it treats of the obligation of the confessor and that of other persons in different paragraphs. The punishment for violating the Seal is also essentially different in both cases.[121]

The question whether the penitent is bound by the

quam illud, quod sacerdos ipse revelando confessionem committit." (Ed. Parisiis, 1609, IV, 1681 ff.). Cfr. Wernz, *Ius Decretalium,* VI, p. 444.

[120] Cfr. Laymann, *loc. cit.;* Gregory of Valentia, *loc. cit.*

[121] Can. 2369.

Seal, is answered negatively by all authors.[122] It is only for reasons of charity and justice that he is ordinarily[123] bound to observe silence regarding what the confessor said to him, and this all the more, since the latter is precluded by the Seal from defending himself or explaining his position.

§ 4. THE OBJECT OF THE OBLIGATION

The extent of the Seal of Confession may be learned from the purpose of this obligation as well as from the wording of the ecclesiastical law. The purpose of the sacramental silence is none other than to avoid rendering the Sacrament of Penance more difficult for the faithful. The Lateran Council and the new Code define the extent of this obligation by saying that the priest must be extremely careful not

[122] See, *e.g.,* St. Alphonsus de' Liguori, *Theol. Moral.,* l. VI, n. 647; J. P. Gury, *Compendium Theol. Moral.,* II[6] (Parisiis, 1899), n. 652; Vermeersch, *Theol. Moral.,* III, p. 410.

[123] A case may occur in which, according to the Constitutions of Gregory XV (*"Universi"* of August 20, 1622) and Benedict XIV (*"Sacramentum Paenitentiae"* of June 1, 1741) the penitent is strictly obliged to denounce the confessor to the proper ecclesiastical authorities, namely, whenever he is guilty of the *crimen sollicitationis ad turpia.* Some French moralists saw in the above ordinance a violation of the Seal of Confession; but without cause. Cfr. Lochon, *Traité du Secret de la Confession* (Paris, 1708), 133 ff. The attempt to apply these

to betray or expose the sinner in the least, either by words or signs, or in any other manner.[1]

The Seal of Confession, therefore, extends to all those communications the revelation of which would lower the penitent in the estimation of others and thus deter him from the Sacrament of Penance. To this category, according to all theologians and canonists, belong in the first place the actual sins of the penitent, no matter whether they be grievous or venial. These, in so far as they are objects of sacramental accusation, according to St. Thomas,[2] fall *directly* under the Seal. That which is not the object of accusation, but, if revealed, would more or less cause the accusation to be known, falls under the Seal *indirectly*. On these points all theologians are

papal constitutions to France caused great excitement in the diocese of Arras. Lochon speaks of this case in his introduction; it furnished the occasion for writing his book, as also that of Lenglet du Fresnoy (Paris-Lille, 1708). Cfr. Urbain, *Revue du Clergé Français,* XLI (1905), 476 ff.

[1] C. 12, X (V, 38): ". . . *Caveat omnino ne verbo, aut signo, aut alio quovis modo aliquatenus prodat peccatorem.*" Can. 889, § 1: "*Caveat diligenter confessarius, ne verbo aut signo aut alio quovis modo et quavis de causa prodat aliquatenus peccatorem.*"

[2] *Comment. in Sent.,* l. IV, d. 21, qu. 3, art. 1, sol. 2: "*Dicendum quod sigillum confessionis non directe se extendit nisi ad illa quae cadunt sub sacramentali confessione; sed indirecte id quod non cadit sub sacramentali confessione, etiam ad confessionis sigillum pertinet sicut illa, per quae posset peccator vel peccatum deprehendi.*" (*Opp. Omn.* X [Romae, 1889], 598).

agreed, although some differ in unimportant minor details.[3]

What about the sins of third persons, which the penitent has lawfully or unlawfully communicated to his confessor? If they are the sins of an accomplice of the penitent, they undoubtedly fall under the Seal, because their revelation would permit a guess regarding the identity of the penitent. The synodal statutes of Odo of Paris (1197) [4] and the Council of Cologne (1279) [5] expressly declare that the confessor must not enquire after the name of the persons with whom the penitent has sinned, and if the latter mentions the names or the sins of others, the confessor should keep them just as secret as the sins of the penitent. Later councils and theologians [6] all agree on this point; indeed, some deny the penitent the right to allow the confessor to make extra-sacramental use of the knowledge he has of the

[3] Cfr. L. Ferraris, *Biblioth., s. v., "Sigill. Sacram.,"* n. 22 (VII [Romae, 1891], 198).

[4] C. VI, n. 14 (Mansi, XXII, 679).

[5] C. 17 *de Paenit.* (Mansi, XXIV, 317).

[6] Richard a Mediavilla, *Comment. in Sent.,* IV, d. 21, art. 4, qu. 4, concl. (Brix., 1656, IV, 344); St. Antoninus, *Summula,* pars III, § 8 (Venet., 1499, fol. 40 a); Navarrus in c. *Sacerdos,* n. 160 (*Opp. Omn.,* I [Venet., 1601], 352; *Summa Angelica s. v., "Confessio,"* ult. n. 17 (Venet., 1578, 285 a); *Summa Tabiena, s. v. "Confess. Celatio,"* n. 7 (Venet., 1569); Laymann, *Theol. Mor.,* l. V, tr. 6, c. 14, n. 4 (Bamberg., 1677, 410); Schmalzgrueber, *Ius Can.,* l. v., lit. 38, n. 66 (Neapoli, 1738, V, 337); S. Alph. de' Liguori, *Theol. Mor.,* l. VI, n. 640 (ed. Gaudé, III [1909], 660).

sins of others.[7] The majority of theologians, however, in so far as they allow the penitent the right to dispense the confessor from the obligation of the Seal, do not include the sins of third persons.[8]

Not subject to the Seal are those communications of the penitent which have no relation whatever to his self-accusation, and hence to the Sacrament of Penance. In explaining this point the penitential *Summae*[9] as a rule cite the example of someone who tells the priest his personal debts. In case they bear a relation to an injustice or some other sin of the penitent, the confessor must observe strict silence with regard to everything he has heard. If, however, no such relation exists, a natural silence at most is imposed.

The virtues of penitents and the special graces with which they may be favored, are also exempt

[7] Gabriel Vasquez, *Comment. in III Part. S. Thomae,* qu. 93, art. 4, dub. 5, n. 6 (Venetiis, 1616, IV, 338).

[8] Cfr. Suarez, *De Sacram. Paenit.,* disp. 34, sect. 4, n. 7 (*Opp. Omn.,* XXII [Parisiis, 1866], 722); S. Alph. de' Liguori, *Theol. Mor.,* l. VI, n. 641 (*loc. cit.,* 661).

[9] Guilielmus Redonensis, *Casus,* tit. 90 (Clm. 2713 [saec. XIV], fol. 108); Monaldus, *Summa, s. verb. "Paenitentia"* (Lugduni, 1516, fol. 178^{v} b); Joh. Friburg., *Summa,* l. III, tit. 34 (Lugduni, 1518, fol. 194^{v} a); Astesanus, *Summa,* l. V, tit. 20 (Norimbergae, 1488, fol. 94 a); *Summa Rosella, s. verb. "Confess. Celatio,"* n. 14 (Norimb., 1488, fol. 41 a); Nicol. ab Ausmo, *Supplementum, s. verb. "Confess. Celatio"* (Venetiis, 1489, fol. 43 a).

from the obligation of the Seal,[10] though, as a matter of course, the confessor is bound to observe natural silence concerning them. Benedict XIV expressly teaches that in an inquiry into the life of a servant of God his confessor may give testimony concerning extraordinary graces and interior virtues as also concerning the subject's freedom from grievous and venial sins.[11] However, according to the Code of Canon Law, this opinion is no longer tenable. According to can. 2027, § 2, n. 1, and can. 1757, § 3, n. 2, the confessor may not give testimony concerning any matter revealed in sacramental confession.[12]

§ 5. THE LEGAL BASIS OF THE SEAL OF CONFESSION

The few testimonies to the Seal which have been handed down to us from the period before the Fourth Council of the Lateran emphasize the strict obligation of sacramental silence, but leave open the question whether this obligation rests merely on the *natural* law or on *positive divine* legislation. The latter is indirectly hinted at, because the ordinance of

[10] Ballerini-Palmieri, *Opus Theol. Morale,* V[3] (1900), 535 ff.; Vermeersch, *Theol. Moral.,* III, p. 412.

[11] *De Servorum Dei Beatificat. et Canonizat.,* l. III, c. 7 (*Opp. Omn.,* III [Prati, 1840] 56 ff.).

[12] For other questions treated by the casuists see Ballerini-Palmieri, *loc. cit.,* 531; P. Diehl, *Das Beichtsiegel* in the *Theol.-praktische Monatsschrift,* IV (Passau, 1894), pp. 299 ff., 384 ff.

Leo I [1] and the decrees of later councils are evidently dominated by the idea that sacramental confession, resting as it does on divine institution, could not exist except on condition of the strictest secrecy.

The Scholastics deal more thoroughly with this question. They trace the obligation of the Seal back to a threefold source: (1) the natural, (2) the positive divine, and (3) the ecclesiastical law.[2] As the Fourth Lateran Council precludes all doubt concerning the latter point, it remains but to see how the Seal was deduced from the natural and the positive divine law.

Canonists and theologians are unanimous in holding that the Seal of Confession is not merely a positive ordinance of *ecclesiastical* law. For if this were so, the Pope, as supreme lawgiver, could dispense from the obligation which it imposes. The power, however, is positively denied him in the commen-

[1] *Epist.*, 168, 2.—A reference to the divine right is also contained in these words of Hincmar of Reims: *"Spiritus Sancti oraculo cautum esse dignoscitur, ut quique peccantes peccatorum suorum latentes causas spiritualibus senioribus patefaciant, qui sciant et sua et aliena vulnera curare et non detegere et publicare."* (*De divortio Lotharii Regis et Thietbergae Reginae,* Migne, *P.L.,* CXXV, 634 B); cfr. Lanfranc, *De Celanda Confessione* (Migne *P.L.* CL. 625 ff.).

[2] Cfr. Alexander of Hales, *Summa Theol.,* pars IV, qu. 19, membr. 2, art. 1, 2 (ed. 1622, p. 599); S. Thomas, *Comment. in Sent.,* IV, d. 21, qu. 3, art. 1, ad 2; Rich. a Mediavilla, *Com. in Sent.,* IV, d. 21, art. 4, qu. 2; Duns Scotus, *Comment. in Sent.,* IV, resp. qu. 2.

taries of the canonists and the penitential *Summae*.[3] Neither by dispensation nor by threat of excommunication, they teach, can an ecclesiastical judge, nay, even the Pope himself, authorize a confessor to reveal the sins confessed to him. Not infrequently the reason is expressly stated to be that the sacramental silence is based on the natural and the divine law.[4]

Richard of Middletown endeavors to prove the natural obligation of the Seal by saying that the violation of it involves an untruth or a lie. Referring to the above-mentioned Decretal of Alexander III, he proceeds from the axiom that whatever the priest learns through sacramental confession only, he knows not as a man, but as God, and consequently, if he reveals anything heard in confession, he does so not according to his human knowledge, and hence tells a lie, which militates against the natural law

[3] St. Thomas, *Com. in Sent.*, IV, d. 21, qu. 3, art. 1, ad 2; Scotus, IV, d. 21, qu. 2, concl. 4; Panormitanus, *Lectura in Decretalae cap. Dilectus* (13, X, V, 31; Lugduni, 1555, fol. 148 a); *Summa Angelica, s. verb. "Confessio," ultimo,* n. 3 (Venetiis, 1578, 230 b); *Summa Sylvestrina, s. verb. "Confessio,"* III,⁰ n. 2 (Venetiis, 1572, 288 b).

[4] Astesanus, *Summa,* l. V, tit. 20: *"Quid si precipiat papa confessori quod dicat id, quod per confessionem scit. Respondeo, non tenetur sibi obedire, quia sacerdos non tantum tenetur celare confessionem de precepto ecclesie, sed etiam de iure nature et divino, super que iura non est papa: unde si precipiatur sibi sub pena excommunicationis late sententie, quod dicat illud, non tenetur."* (Ed. Norimb., 1482, fol. 93ᵛ a). Cfr.

and can never be permitted.[5] Nicholas Trivet (about 1314) in his *Quodlibeta* expressly treats the question whether the priest is guilty of a lie if he violates the Seal of Confession.[6]

Duns Scotus rightly rejects this argument, saying that the priest actually possesses the knowledge he has obtained in confession as a man, because as a man he is the minister of the Sacrament, as a man he sits in judgment and adjudicates the case, even though he is vested with divine authority. Therefore, according to Scotus, there can be no question of a lie in violating the Seal. He deduces the natural obligation of the Seal from other reasons, above all from the universal principle laid down in Matth. VII, 12[7] and Luke VI, 31,[8] that we must not do unto others what we do not wish them to do unto us. Moreover, he says, confession bears the character of a *secretum commissum,* since the penitent

St. Thomas, Duns Scotus, Panormitanus, *loc. cit.* On the contrary opinion, mentioned in the gloss to the decree of Gratian and by William of Auxerre, see *supra* p. 122, n. 15; p. 123, n. 17.

[5] *Comment. in Sent.,* IV, d. 21, art. 4, qu. 1, concl. (Brixiae, 1656, IV, 340).

[6] *Quodl.,* I, qu. 16. Cfr. Fr. Ehrle, *Nik. Trivet, sein Leben, seine Quodlibet und Quaestiones Ordinariae* (*Abhandlungen zur Gesch. der Philosophie des Mittelalters,* Suppl. Bd. II [Münster, 1923], 53).

[7] *"Omnia ergo quodcumque vultis ut faciant vobis homines, et vos facite illis."*

[8] *"Prout vultis ut faciant vobis homines, et vos facite illis similiter."*

opens his conscience to the priest *solely on condition and on the presupposition* that the latter will observe strict silence, and the confessor tacitly assumes this obligation by receiving the confession. Finally, the common welfare demands silence in regard to entrusted secrets, because otherwise no one would dare to ask advice in difficult cases, which would be a great detriment to the common good.[9] The reasons adduced by Scotus are repeated in various forms [10] by most later theologians, whilst the opinion of Richard of Middletown found few defenders.

Although the Seal of Confession entails a natural obligation, just as any other confided secret, nevertheless this fact would not suffice to explain the rigor with which the Seal is enforced without exception and in all cases. This degree of obligation the theologians endeavor to deduce above all from the *positive divine* law. St. Thomas writes that the obligation of the Seal follows *per se* from the Sacrament

[9] *Comment. in Sent.,* IV, d. 21, qu. 2, resp. (*Opp. Omn.,* XVIII [Paris, 1894], 731 ff.).

[10] Cfr. Astesanus, *Summa,* l. V, tit. 20 (Norimbergae, 1482, fol. 93 b); Gabriel Biel, *Comment. in Sent.,* IV, d. 21, qu. unica, art. 3 (Lugduni, 1514); Dom. de Soto, *Comment. in Sent.,* IV, qu. 4, art. 5 (Lovanii, 1573, 511); Suarez, *De Sacram. Paenit.,* disp. 33, sect. 1, n. 5 (*Opp. Omn.,* XXII [Parisiis, of Middletown 1866], 688), incorrectly attributes the view of Richard to Alexander of Hales and St. Bonaventure.

itself. As the duty of confession is based on divine law, and no dispensation or human command can free one from it, so no one can be compelled or authorized by any man to reveal the sins heard in confession.[11] The relation of the Seal to the Sacrament of Penance is explained thus by the Angelic Doctor: In the Sacraments the external actions are the signs of what is going on interiorly. Now God covers up the sins of him who submits them to Him in the tribunal of Penance. This fact must be expressed by a sign, and therefore the Seal necessarily belongs to the Sacrament.[12] Moreover, secrecy is a benefit also in other ways, because people will thereby feel more attracted to the Sacrament and more inclined to make a sincere confession.[13] The main reason for the Seal, therefore, according to St. Thomas, consists

[11] *Comment. in Sent.*, IV, d. 21, qu. 3, art. 1, ad 2: *"Dicendum quod praeceptum de confessione sacramentali facienda est de iure divino et non potest aliqua dispensatione vel iussione humana homo ab ea absolvi, ita nullus ad revelationem confessionis potest ab homine cogi vel licentiari."* (*Opp. Omn.*, X [Romae, 1889], 598).

[12] *Ibid.*, d. 21, qu. 3, art. 1, sol. 1: *"In sacramentis ea quae exterius geruntur, sunt figura rerum quae interius contingunt; et ideo confessio qua quis sacerdoti se subicit, signum est interioris qua quis Deo subicitur. Deus autem peccatum illius qui se sibi subicit per paenitentiam tegit; unde et hoc oportet in sacramento paenitentiae significari; et ideo de necessitate sacramenti est quod quis confessionem celet."* (*loc. cit.*, 597).

[13] *"Praeter hoc sunt aliae utilitates huius celationis; quia per hoc homines ad confessionem magis attrahuntur et simplicius peccata confitentur."* (*loc. cit.*).

in this, that it is so to speak an integral part of the Sacrament,—an outward sign of what is effected in the soul. In this sense he says in another passage: [14] The priest is bound to keep secret the sins heard in confession for two reasons: in the first place and chiefly because secrecy is of the essence of the Sacrament, in as far as the priest knows those sins as God, whose representative he is in confession. Secondly and incidentally because of the advantage accruing therefrom to the Sacrament of Penance and to the penitent.

The great esteem in which St. Thomas was held by his school caused his view of the Seal to be widely adopted. Thus we find it repeated in Peter of Tarentaise,[15] Hugh of Strasbourg,[16] in the penitential *Summae* of John of Freiburg,[17] Albert of Brescia,[18]

[14] *Comment. in Sent.,* IV, d. 21, qu. 3, art. 2, sol.: ". . . *Duo sunt propter quae sacerdos tenetur peccatum occultare. Primo et principaliter quia ipsa occultatio est de essentia sacramenti, in quantum scit illud ut Deus, cuius vicem gerit ad confessionem. Alio modo propter scandalum vitandum.*" (*loc. cit.,* 599). Cfr. Guil. Arendt, *De Radice Inviolabilitatis Sigilli in Sacramento Poenitentiae iuxta Doctrinam S. Thomae* (*Gregorianum,* V [Romae, 1924], 79–93).

[15] *Comment. in Sent.,* IV, d. 21, qu. 4, art. 2 (Tolosae, 1652, 242).

[16] *Compendium Theologicae Veritatis* (*Alberti Magni Opp. Omn.,* XXXIV, [Parisiis, 1895], 226).

[17] *Summa Confessorum,* l. III, tit. 34, qu. 91 (Lugduni, 1518, fol. 194 a).

[18] *Summa,* pars III, c. 1 (Clm. 18407 [saec. XV], fol. 142^{v} a).

Bartholomew of Pisa,[19] Nicholas of Osimo,[20] Baptist de Salvis,[21] John Cagnazzo,[22] and Sylvester Prierias,[23] as well as in the commentaries of Capreolus,[24] Sylvius,[25] Estius,[26] and Billuart.[27] An exception to this rule is Durandus of St. Portiano (+ 1334 as bishop of Meaux), an independent and severe critic of St. Thomas in this as in other questions. Durandus declares the Thomistic argument to be inadequate. It is true, he says, that the Sacraments require an outward sign to indicate their inward effect. In the Sacrament of Penance the inward effect, *i. e.*, the remission of sins, is indicated outwardly by the words of absolution. To conceal the sins confessed is indeed a duty of the priest, but not an effect of the Sacrament. The argument that, since Christ

[19] *Summa, s. verb. "Confession. Celatio,"* n. 1 (ed. *s. l.*, 1475, fol. 27 v b).

[20] *Supplementum, s. verb. "Confess. Celatio,"* n. 1 (Venet., 1489, fol. 42 v b).

[21] *Summa Rosella, s. verb. "Confess. Celatio,"* n. 1 (Norimb., 1488, fol. 40 a).

[22] *Summa, s. verb. "Confession. Celatio,"* n. 1 (Venetiis, 1569).

[23] *Summa, s. verb. "Confessio,"* III °, n. 1 (Venetiis, 1572, 288 a).

[24] *Comment. in Sent.*, IV, d. 21, qu. 2, art. 3 (Venetiis, 1515, fol. 119 v a).

[25] *Comment. in III Part. S. Thom.*, qu. 11, art. 1 (Antverp., 1714, IV, 528).

[26] *Comment. in Sent.*, IV, d. 17, § 14 (Parisiis, 1662, IV, 233).

[27] *De Sacram. Paenit.*, diss. 8, art. 1 (*Opp. Omn.*, VII [Paris, 1872], 207).

conceals the confessed sins, His representatives must imitate Him, proves nothing because Christ in this life reveals neither unconfessed nor confessed sins, whereas in the life hereafter all sins will be made manifest.[28] Though these arguments of Durandus appear quite plausible, the Thomists continued to defend the view of their master. To the objection that all sins would be made manifest in the life to come, they replied in the words of St. Thomas: God covers the confessed sins only in the sense that He no longer regards them with a view to punish them, and that their manifestation in the next life will, on account of the penance performed, redound to the honor and not to the shame of the just.[29] In like manner they endeavored to meet the objection that the argument of St. Thomas is inadequate for bad and invalid confessions.[30] Since there can be no question here of a blotting out of sins, the confessor is nevertheless bound to the same sacramental silence. To this the answer was: *per se* God blots out in confession all known sins; it is the fault of the penitent if

[28] *Comment. in Sent.*, IV, d. 21, qu. 4 (Parisiis, 1508, 404 b).

[29] Cfr. Capreolus, *Comment. in Sent.*, IV, d. 21, qu. 2, art. 3 (Venetiis, 1515, 119^{v} a); Dom. de Soto, *Comment. in Sent.*, IV, d. 18, qu. 4. art. 5 (Lovanii, 1573, 511 ff).

[30] Richard of Middletown remarks in his *Comment. in Sent.*, IV, d. 21, art. 4, concl. 2: *"Haec tamen ultima ratio per se insufficiens esset, quia non probat oportere celari nisi peccata confitentis, qui vere paenitet."* (Ed. *s. l.*, 1512, fol. 140^{v} b; in the edition of 1656 this passage is corrupted).

this effect is not produced in his case; but this does not justify the confessor in omitting anything of what the Sacrament as such requires of him.[31]

However, these arguments did not satisfy other theologians. Suarez, for instance, says of the above-quoted passage of St. Thomas, that while it contains an argument based on congruity, it furnishes no adequate foundation for the obligation of the Seal.[32] Cardinal de Lugo shared this opinion. Secrecy, he says, is not something essential to the Sacrament, because the latter may by its nature be administered publicly. Therefore, the remission of sins need not necessarily be expressed by the Seal.[33] Even some followers of the Thomistic school endeavored to explain the statement of St. Thomas: *"Sigillum confessionis est de essentia sacramenti"* by saying that the Seal belongs to the nature of the Sacrament of Penance, as when we say that the upward tendency belongs to the essence of a light body,

[31] Hadrian of Utrecht, *Quaestiones in Sent.*, IV (Parisiis 1528, fol. 92).

[32] *De Sacram. Paenit.*, disp. 33, sect. 1, n. 6: *"Ego vero censeo esse quidem aliqualem congruentiam, non tamen sufficiens fundamentum ad obligationem, quia illa significatio non est substantialis in hoc sacramento neque hoc ulla ratione vel auctoritate probatur"* (*Opp. Omn.*, XXII [Parisiis, 1866], 688).

[33] *De Sacram. Paenit.*, disp. 23, sect. 1, n. 2 (*Opp. Omn.*, V [Parisiis 1893], 355). Cfr. Gregory of Valentia, disp. VII, qu. 13 (*Parisiis*, 1609, IV, 1680).

or the *debitum coniugale* belongs to the essence of Matrimony.[34]

Duns Scotus also deduced the Seal from the divine law, but by a different argument. In his opinion the reason for this obligation lies in the fact that the violation of the Seal would necessarily deter the faithful from receiving the Sacrament of Penance. True, St. Thomas [35] and Alexander of Hales [36] mention this reason, but do not lay the main stress on it. Scotus holds that since the obligation of the Seal rests on an ordinance of Christ, he who deters others from obeying it violates the divine law by breaking the Seal. He cites two other reasons, but they partake rather of the nature of an argument from congruity.[37] The Franciscan Astesanus in his widely

[34] Peter de Palude, *Comment. in Sent.*, IV, d. 21, qu. 3, art. 3 (Parisiis, 1514, 115[v] a). S. Antoninus, *Summa Theol.*, pars III, tit. 17, c. 22; Dom. de Soto, *Relectio de Ratione Tegendi et Detegendi Secretum*, membr, 3, qu. 4, concl. (Venetiis, 1590, 330 ff.).

[35] *Comment. in Sent.*, IV, d. 21, qu. 3, art. 1, sol.: *"Praeter hoc sunt aliae utilitates huius celationis, quia per hoc homines ad confessionem magis attrahuntur et simplicius peccata confitentur."* (*Opp. Omn.*, X [Parisiis, 1889], 597).

[36] *Summa Theol.*, pars IV, qu. 19, membr. 2, art. 1 (ed. 1622, 599).

[37] *Comment. in Sent.*, IV, d. 21, qu. 2, concl. 2: *"Quilibet Christianus tenetur non dare occasionem alteri qua revocetur a lege Christi; sed lex Christi est de confessione facienda ut ostensum est dist. 17; igitur quilibet in lege Christi tenetur non retrahere aliquem a confessione facienda; sed revelans confessionem occasione data retrahit aliquos a confessione."* (*Opp. Omn.*, XVIII [Parisiis, 1894], 736).

circulated penitential *Summa* follows Duns Scotus,[38] as do most later theologians, by laying the main stress on the Scotistic argument. If you ask, writes *e. g.,* Dominic de Soto, where the divine precept of the Seal is written, I reply, in the same place where the confession of secret sins is prescribed. According to Aristotle we hold that if an end is necessary, the means to attain that end are also necessary. If it is necessary to live, and we cannot live without food, then food is necessary. The same may be said of confession and the Seal.[39]

The Jesuits Gabriel Vasquez [40] and Giles Coninck [41] go still farther. They are of the opinion that the obligation arising from the purpose and nature of the Sacrament of Penance is not sufficient to impose inviolable silence on the priest when the penitent shows himself unrepentant, *e. g.,* by refusing to desist from a crime detrimental to the common weal. The Sacrament as such merely requires that the Seal be preserved in favor of those who show themselves

[38] L. V, tit. 20 (Norimb., 1482, fol. 93 ^{v} a).

[39] *Comment. in Sent.,* IV, d. 18, qu. 4, art. 5 (Lovanii, 1573, 511 ff.).

[40] *Comment. in III Part. S. Thom.,* qu. 93, art. 4, dub. 1, n. 9: *"Mihi videtur et esse quoddam praeceptum quod naturali ratione sequitur ex ipsa institutione, et esse aliud positivum divinum, quod magis et latius obligat superadditum voluntate Dei ipsi institutione nec ex illa secutum."* (Antverpiae, 1616, IV, 330).

[41] *Commentariorum et Disputationum in Universam Doctrinam D. Thomae de Sacramentis et Censuris,* disp. IX, dub. 2, n. 34 (Antverp., 1616, 497 a).

worthy of it. If, in spite of this, the Seal obliges in all cases without exception, it must be on account of a *special* positive command of Christ. This view is rejected by Suarez,[42] de Lugo,[43] and other theologians. Cardinal de Lugo argues that a positive command of Christ cannot be shown to exist and consequently is not necessary. As in the case of certain other precepts of the natural and divine law (*fornicatio, mendacium*), no exception is admissible out of regard for the common weal, so the Sacrament of Penance also requires absolute silence, and even if injury is thereby caused in some cases to individuals or entire communities, the general benefit accruing to the faithful and to the Church at large from the obligation of the Seal greatly preponderates.

Although this argument is still generally employed by canonists and theologians, Peter of Bassol[44] long ago perceived that the obligation of the Seal cannot be demonstrated by *cogent* reasons deduced from positive divine law. The most distinguished canonist of the 16th century, Navarrus, seems to have held the same view. In his interpretation of *cap.*

[42] *De Sacram. Paenit.*, disp. 33, sect. 1, n. 10 (*Opp. Omn.*, XXII [Parisiis, 1866], 689).

[43] *De Sacram. Paenit.*, disp. 23, sect. 1, n. 5 (*Opp. Omn.*, V [Parisiis, 1893], 356).

[44] *Comment. in Sent.* IV, d. 21, qu. 2: *"Istae rationes etiam sunt probabiles. Et forte quantum ad aliquas earum necessario universaliter non concludunt, sed non curo modo eas amplius discutere; nam in talibus non possunt adduci multo meliores rationes."* Cfr. *Dictionnaire de Théol. Cath.*, III, 921.

"*Sacerdos*" he says it must be assumed that Christ, in prescribing confession and making it obligatory, tacitly determined the conditions without which confession is not at all or hardly possible. Our Lord said that His yoke is sweet and His burden light, but without strict silence on the part of the priest, confession would be an intolerable burden.[45] He admits, therefore, as do Suarez and the Salmanticenses, that the Seal is not an *absolutely* necessary part of the Sacrament of Penance, because Christ could have imposed confession as a duty even without strict silence. But it cannot be presumed that He did so, because it would agree neither with the spirit of the gospel nor with human nature. The reasons by which we trace the Seal to the divine law, therefore, are reasons of congruity and equity rather than of strict logic.

We may now sum up our argument. The Seal of Confession is based primarily on the *natural* law, which dictates that every man must respect the good name of his fellowmen and not reveal their faults without a grave cause. This precept of the natural law obligates most strictly when one man confides his secret to another on the express or tacit condition that it is not to be revealed to anyone. Such a tacit contract, according to the present-day view, exists in the Sacrament of Penance as often as a penitent con-

[45] *In Cap. Sacerdos*, n. 32, 33 (*Opp. Omn.*, I [Venetiis, 1601], fol. 345ᵛ).

fesses his sins to a priest. In the second place, the Seal is based on the positive divine law. True, there is no express command of Christ enjoining it; but the strict silence of the confessor no doubt is in harmony with the intention of the Divine Lawgiver, since we cannot reasonably assume that Christ, by instituting Penance, wished to impose an insupportable burden.

Though this double basis of the Seal is indisputable, it does not follow that secret confession and the Seal were necessary always and in the same manner. The penitential zeal of the early Christians impelled many to confess their sins and do penance for them publicly. The Church, or, more correctly, individual bishops, were justified in approving of this practice and exhorting the faithful to observe it as a law introduced by custom. Christ did not prescribe secret confession as the only form. The early Christians in their zeal believed public humiliation to be especially efficacious in procuring the forgiveness of sins. Nor was there any grave disadvantage or discomfort for the penitent connected with this exposure of his conscience, which rather contributed to the edification of the faithful. As long as public penance was morally possible, therefore, the Church did not need to insist on the strict concealment of sins. The axiom, *"Cessante fine cessat lex"* in a certain sense applies also in this case. When the primitive zeal of Christians began to abate and public

confession and penance commenced to be detrimental to the good name of the penitent and deterred the faithful from making use of the saving remedy of Penance, the Church was forced to confine herself to the essentials of the Sacrament. Then public confession disappeared, and later also public penance for secret sins. Secret confession was introduced, which complied with the demand of the natural law that the good name of the penitent be protected and the requirements of the positive divine law, that strict silence be observed, in order not to frustrate the purpose of Christ in instituting this Sacrament. That this period began quite early may be seen from the writings of Tertullian and Origen. In course of time the indefinite formulation of the natural and the divine law was more closely determined by ecclesiastical legislation.

From this point of view it ought not to be difficult for the historian and the theologian to reach an agreement. With the latter we hold that the obligation of silence on the part of the confessor is based on the positive divine law, which, however, obliges only *in as much* and *in so far* as is required by the *purpose* of confession. Conditions in the early centuries did not postulate an absolute necessity, as it is now universally accepted by theologians. Hence, when the historian produces evidence to show that the Church formerly required a public confession of secret sins, we may accept this as calmly as the fact

of a voluntary public confession and an obligatory public penance for secret sins.

§ 6. DISPENSATION FROM THE OBLIGATION OF THE SACRAMENTAL SEAL

In discussing the Seal of Confession canonists and theologians are wont to raise the question, whether and how far in individual cases the penitent is authorized to dispense the confessor from the obligation of secrecy. All admit that such an authorization can be given only by the penitent.[1] The Pope cannot dispense from the Seal in any case,[2] for the reason

[1] Regarding the exception mentioned in the *"Glossa Ordinaria"* on *Cap. Sacerdos* (c. 2, D. VI *de paenit.*) and by William of Auxerere, see *supra* p. 122, n. 15, p. 123, n. 17. The latter writer has in mind a case where the penitent obstinately persists in a sinful purpose injurious to others. Although, according to the older canonists, there is in this case no obligation of secrecy, nevertheless William of Auxerre, in order to preclude all abuse, requires the approbation of the bishop for the lawful use of the knowledge thus obtained. Later theologians understood this passage in the sense of a dispensation by the bishop; all, however, rejected the theory. Cfr. William's commentary on Scotus' *Comment. in Sent.*, IV, d. 21, qu. 2 (*Opp. Omn.*, XVIII [Parisiis, 1894], 742).

[2] Cfr. Scotus, *loc. cit.*, 740; Astesanus, *Summa*, l. V, tit. 20 (Norimb., 1482, fol. 93^{v} a); St. Antoninus, *Summa Theol.*, pars III, tit. 17, c. 22; Panormitanus, *Lectura in Decretales*, cap. *Dilectus* (13, X, V, 31) (Lugduni, 1555, 148 a); *Summa Angelica, s. verb. "Confession. Celatio,"* n. 3 (Venetiis, 1578, 230 b); *Summa Sylvestrina, s. verb. "Confessio,"* III °, n. 2 (Venetiis, 1572, 288 b).

that, as St. Thomas says, the confessor possesses his knowledge of confession as the representative of God, and the Pope cannot cause him to possess and use it as a man. It is different, however, with the penitent. What he has confessed to the priest as representative of God, he can also communicate to him as a man, simply by giving permission to the confessor, either in the tribunal of penance or outside of it, to make use of the knowledge communicated to him in confession.[3]

Other theologians for various reasons raised objections against this view. Alexander of Hales, *e. g.*,[4] says that the permission of the penitent does not alter the knowledge of the confessor, which afterwards as before he possesses as the representative of

[3] *Comment. in Sent.*, IV, d. 21, qu. 3, art. 2, ad 1: *"Dicendum quod papa non potest licentiare eum ut dicat; quia non potest facere ut sciat ut homo, quod potest qui confitetur."* (*Opp. Omn.*, X [Parisiis, 1889], 599. *Ibid.*, sol. 1: *"Potest autem paenitens facere ut illud quod sacerdos sciebat ut Deus, sciat etiam ut homo, quod facit dum eum licentiat ad dicendum."* (*loc. cit.*, 599).

[4] *Summa Theol.*, pars IV, qu. 19, membr. 2, art. 3: *"Concedo simpliciter quod confitens non potest sufficienter licentiare sacerdotem ad hoc, ut possit ipsum detegere, et hoc propter tres rationes. Prima est, cum illud audiat loco Dei, et dicere non possit aliis nisi in quantum Deus, nullo modo potest illud aliis revelare, cum in quantum homo ignoret illud simpliciter. Secunda est, quod ad celandum astrictus est praecepto superioris, respectu cuius non potest eum paenitens licentiare. Tertia est, quia hoc fieret in scandalum aliorum."* (Ed. 1622, p. 601 a sq.).

God, and hence cannot put to human uses. Moreover, there is question here of a prohibition by a higher authority (the Pope), in contravention of which the penitent cannot give any permission. Finally, such a practice is apt to cause scandal. Alexander goes on to refute the objection that the penitent may waive this right because the Seal has been instituted for his benefit. The Seal, he replies, is *"ad bonum commune,"* for safeguarding the Sacrament of Penance, and hence it is not left to the discretion of each individual penitent to have it observed or violated. This truth is not altered by the custom according to which the confessor in difficult cases communicates the matter to others with the penitent's permission. Such a custom, which is found only among ignorant confessors, must be repudiated. Only to a custom legitimately introduced and acknowledged can be applied the principle: *"Consuetudo optima legum interpres."* [5]

Duns Scotus also holds that the simple permission of the penitent does not dispense the confessor from keeping the Seal. To support this he does not appeal to the view that the priest, *qua* man, has no knowledge of what is communciated to him in confession,—a view which led Richard of Middletown to declare any violation of the Seal a lie, because such a revelation does not correspond to the confessor's human knowledge.[6] Scotus expressly insists that the

[5] C. 8, X (I, 4); Alexander of Hales, *loc. cit.*

[6] *Comment. in Sent.*, IV, d. 21, art. 4, qu. 1, concl.

priest, even *qua* man, has a true knowledge of what he has heard in confession. True, in receiving the confession and administering the Sacrament, he acts *"auctoritate Dei,"* because he is the minister of God; it is equally true that he receives the confession not *"in persona Dei,"* but *"in persona propria,"* because it is one thing *"agere auctoritate alterius"* and quite another *"agere in persona alterius."* [7] If he nevertheless asserts that the penitent cannot dispense the confessor from his obligation of silence, he explains it by saying that in the first place Christians as a whole have an incontestable right to the secrecy of confession, which the individual cannot waive, and even if the Seal of Confession had been instituted in favor of the individual, it nevertheless is based on the natural, the divine, and the ecclesiastical law, over which the penitent has no power. The confessor must endeavor to persuade the penitent to communicate to him outside of confession whatever knowledge he wishes him to use.[8]

[7] *Comment. in Sent.*, IV, d. 21, qu. 2, resp. (*Opp. Omn.*, XVIII [Paris, 1894], 733).

[8] *Ibid.*, ad 1, p. 750 f.: *"Non est tantum ius confitentis, sed ius communitatis . . . et non licet isti renuntiare iuri communitatis, licet suo. Aliter potest dici, esto etiam quod tantum esset ius istius, i. e. in favorem istius indulti non licet isti renuntiare quoad hoc, quod confessor sit liber ad revelandum, quia confessor tunc tenetur multiplici iure, naturae sc. et positivo, quorum nullius revocatio est in potestate confitentis. Quid igitur faciet confessor confesso volente peccatum suum prodi?*

Durandus lays down the same principle, agreeing for once with St. Thomas Aquinas. The simple permission of the penitent does not give the priest an extra-sacramental knowledge of what has been confessed. What the confessor knows, he knows through sacramental confession, and this knowledge, according to the universal opinion of theologians, he is not permitted to use. Moreover, such a practice might easily lead to abuses, for as often as a confessor is called upon to testify in court, the judge might demand of the defendant to give the priest permission to make use of his sacramental knowledge. If the defendant obeys, he creates a dangerous witness against himself; if he refuses, he strengthens the suspicion that he is guilty.[9]

Among later writers this view is advocated by Gerson,[10] Nicholas of Dinkelsbühl,[11] John Nieder,[12]

Dico quod confitens potest postea peccatum suum extra confessionem dicere." Cfr. Peter de Aquila (+1361), *Commentaria in Sent.*, IV, dist. 20 et 21, qu. 3 (Levanti 1909, pp. 236 ff.).

[9] *Comment. in Sent.*, IV, d. 21, qu. 4: "*Per haec verba licentio te ad dicendum id quod a me in confessione audivisti non datur aliqua nova notitia, . . . sed solum datur licentia, quia nec plus verba sonant; ergo per illam nunquam est licitum dicere sacerdoti quod audivit in confessione.*" (Paris., 1508, fol. 404^{v} a).

[10] *Regulae Morales*, n. 136 (*Opp. Omn.*, III [Hagae Comitum, 1728], 102).

[11] *Tractus de Paenitentia* (Argentinae, 1516, fol. 92^{b} ff.

[12] *Manuale Confessorum; Regulae in Confessione Servandae*, II, c. 7 (ed. *s. l. et a.* [Hain, II, 838], fol. 32^{v} a).

Gabriel Biel,[13] Angelus of Chiavasso,[14] and, more recently, by Binterim,[15] Gründler,[16] München,[17] Hinschius,[18] and others. To this group we may add those who hold a sort of middle position by asserting that the confessor is allowed to reveal the sins of the penitent with the latter's permission only in so far as this is necessary or advantageous for the reception of the Sacrament, which holds good especially in reserved cases, when the penitent himself either cannot confess to his superior at all, or only with great difficulty. In such a case, Richard of Middletown thinks the confessor may, with the permission of the penitent, lay the case before the superior. But if he wishes to communicate the matter of confession to others, the simple permission of the penitent will not suffice. The matter confessed must be

[13] *Comment. in Sent.,* IV, d. 21, qu. un., art. 3, ad 5, dub. 4 (Lugduni, 1514, *sine pag.*)

[14] *Summa, s. verb. "Confessionis Celatio,"* n. 5 (Venetiis, 1578, 231 a-b).

[15] *Denkwürdigkeiten,* V, 3, 315.

[16] *Über die Unverletzlichkeit des Beichtsiegels* in Weiss, *Archiv der Kirchenrechts-Wissenschaften,* IV (Offenbach a. M., 1833), 101.

[17] *Das kanonische Gerichtsverfahren und Strafrecht,* II [2] (1874), 690.

[18] *System des Kirchenrechts,* IV (1886), 134.

[19] *Comment. in Sent.,* IV, d. 21, art. 4, qu. 1, ad 1: *"Sacerdos de licentia confitentis potest licite peccatum sibi confessum alii revelare, qui sibi necessarius est vel utilis ad perficiendum quae requiruntur ad illud forum; quia quamdiu hoc pendet adhuc*

repeated outside of confession.[19] Peter de Palude agrees with this view. As the penitent who is ignorant of the language of the confessor, may employ an interpreter, so in a similar manner he may in reserved cases authorize the confessor to communicate his sins to the superior, in order that the latter may either himself give absolution or commission the confessor to give it. The confessor may, of course, communicate the sins to the superior without the penitent's permission, provided no name is mentioned; but in certain cases it is necessary to name the person, and then it may be done with the permission of the penitent. It appears, therefore, that Paludanus does no confer any further right on the penitent than is necessary for the reception of the Sacrament.[20]

Although the question here at issue was not touched upon at the Lateran Council of 1215 or in any general ecclesiastical law before the Code of Canon Law was published, *the majority of canonists and theologians hold the penitent competent to release the confessor from the obligation of the sacramental Seal.*

gerit personam vicarii Dei; sed de licentia confitentis alii personae non licet, nisi ille qui confessus est hoc iterum diceret extra confessionem." (Brixiae, 1656, IV, 340).

[20] *Comment. in Sent.*, IV, d. 21, qu. 3, art. 3, concl. 1 (Parisiis, 1514, fol. 116 b).

St. Thomas writes: The priest is bound to silence for two reasons. First because the keeping of the secret is necessarily a part of the Sacrament and the confessor possesses his knowledge only as the representative of God; secondly, in order not to give scandal to others. The first reason disappears because the penitent by his permission causes the confessor to know the matter of confession also *qua* man; if, moreover, scandal is precluded, he may use his knowledge without violating the Seal.[21]

St. Bonaventure[22] makes use of the same argument, but adds: Whenever a suspicion arises that the priest is violating the Seal of Confession, he should persuade the penitent to tell others what it is necessary for them to know. The confessor is, however, allowed to use this permission only with persons who may be useful to the penitent. Furthermore, the permission applies only to one's own sins, not

[21] *Comment. in Sent.*, IV, d. 21, qu. 3, art. 3, sol.: "*Dicendum quod duo sunt propter quae sacerdos tenetur peccatum occultare. Primo et principaliter, quia ipsa occultatio est de essentia sacramenti, in quantum scit illud ut Deus, cuius vicem gerit ad confessionem. Alio modo propter scandalum vitandum. Potest autem paenitens facere ut illud quod sacerdos sciebat ut Deus, sciat etiam ut homo; quod facit dum eum licentiat ad dicendum; et ideo si dicat, non frangit sigillum confessionis. Tamen debet cavere scandalum dicendo; ne fractio sigilli praedicti reputetur.*" (*Opp. Omn.*, X [Parisiis, 1889], 599).

[22] *Comment., in Sent.*, IV, d. 21, pars II, art. 2, qu. 2, concl. (Ed. Quaracchi, IV, 568).

to those of others, unless the revelation of the latter would be of extraordinary benefit.

Monaldus does not touch this question. John of Freiburg,[23] Burchard of Strasbourg,[24] and Albert of Brescia [25] follow St. Thomas. John of Freiburg quotes the counsel given to confessors by Ulrich of Strasbourg (+ 1272–77) to cause the penitent to repeat outside of confession what he wishes to be communicated to others.[26]

Astesanus [27] has incorporated in his *Summa* the text of St. Bonaventure, whilst Bartholomew of Pisa [28] and Nicholas of Osimo [29] follow St. Thomas. The canonists do not treat our question *ex professo,* but agree with the theologians in holding that the confessor may testify in court whenever the peni-

[23] *Summa,* l. III, tit. 34, qu. 100 (Lugduni, 1518, fol. 194 v b).

[24] *Summa,* l. III, tit. 117 (Clm. 7810 [1320], fol. 69 a).

[25] *Summa,* pars III, c. 5 (Clm. 18407 [saec. XV], fol. 142 v b sq.).

[26] *"Consilium tamen fuit Ulrici, quod cum aliquid revelandum est de his quae dicuntur in confessione, confessor dicat penitenti ut post confessionem tamquam homini dicat de peccatis suis quantum placet sibi revelari."* (*loc. cit.*). Concerning Ulrich of Strasbourg, who perhaps was the teacher of John of Freiburg, see Stintzing, *Populäre Literatur,* 508; Hurter, *Nomencl.,* II,[3] 386.

[27] *Summa,* l. V, tit. 20 (Norimb., 1482, fol. 194 a).

[28] *Summa s. verb. "Confession. Celatio,"* n. 10 (ed. *s. l.,* 1475, fol. 28 b).

[29] *Supplement, s. verb. "Confession. Celatio"* (Venet., 1489, fol. 43 v b).

tent himself requests it. Thus Hostiensis,[30] John Andreae,[31] and Henry Bohic.[32]

The 15th century treatise on the Seal, which we have repeatedly quoted before, requires four conditions to render it lawful for the confessor to use his sacramental knowledge: (1) The permission of the penitent, (2) a good purpose, (3) the absence of scandal, and (4) the absence of danger to the penitent.[33] The *Summa Metrica* likewise declares that only if there is question of great benefit, may the confessor use the permission of the penitent, with due deference to the Sacrament and without giving the penitent an occasion to say that the priest violated the Seal.[34]

St. Antoninus, quoting Peter de Palude, writes: The permission to reveal a sin, no matter how general the terms in which it may be given, can be used

[30] *Summa de Paenit. et Remiss.*, n. 53: *"Ergo nisi te ipsemet qui confessus est producat in testem taceas."* (Venet., 1570, fol. 474[v] b).

[31] *Comment. in Decretal., cap. "Omnis"* (12, X, V, 38).

[32] *Comment. in Decretal., cap. "Omnis"* (Lugduni, 1498, fol. 77[v] b).

[33] Clm. 2834 (saec. XV), fol. 79.

[34] *Summa Metrica cum Glossa: de qualitatibus confessionis,* ad 7: *". . . Si confitens dat confessori licentiam revelandi, si tunc reveletur, non frangitur sigillum confessionis, tamen est tutum, ne confessor revelet nisi magna utilitas posset inde sequi, et hoc propter reverentiam sacramenti et ne confitens postea dicat illum sacerdotem revelare peccata sibi dicta in confessione."* (Clm. 3049 [a. 1444], fol. 11).

only for the benefit of the penitent. Hence if a judge or religious superior would request an accused person to permit his confessor to testify outside of confession, the confessor may not do it to the disadvantage of the penitent, even if the latter gives him the permission.[35]

The *Summa Rosella* furnishes no new points, but merely repeats the text of Astesanus.[36] Our question is thoroughly discussed by Hadrian of Utrecht.[37] After having examined the reasons *pro* and *con,* he espouses the doctrine of St. Thomas and St. Bonaventure. The Seal of Confession, he argues, is designed for the benefit of the individual and thus, indirectly, for the benefit of all. However, as any man may renounce his right to an entrusted secret, so also may the penitent with regard to the Seal; it is different, however, in regard to the *privilegia fori* and

[35] *Summula,* pars III: *"Licentia quam dat penitens confessori de revelatione peccati quantumcumque generalis, non intelligitur nisi ad bonum confitentis sec. Petr. de Palude. Sed nota secundum eundem, quod si iudex diceret alicui capto pro maleficio: da licentiam confessori, quod dicat si tu es confessus de hoc vel de illo, non tenetur dare . . . sed etsi daret licentiam, sic licentiatus non debet dicere peccatum illud si est commissum. Item si preciperet prelatus alicui confessori quod diceret sibi peccatum alicuius, quod est omnino occultum, et si confessus dedisset licentiam illi quod diceret, non tenetur dicere neque obedire ut revelet illud."* (Ed. Venetiis, 1499, fol. 38 a).

[36] *S. v. "Confessionis Celatio,"* n. 8 (Norimb., 1488, fol. 40^{v} a).

[37] *Quaestiones in IV L. Sent. de sacram. confess.,* qu. ultima (Parisiis, 1528, fol. 93 a sq.).

canonis, which have reference not so much to the individual as to his station in life as such. Neither can it be said that the penitent by his permission dispenses from a divine or natural law; it is the object that is altered and with it the obligation falls by itself.[38]

To communicate the matter of confession anew to the priest outside of confession Dominic de Soto declares to be an empty ceremony; the permission might as well be given in the confessional as to repeat outside of it what was confessed. Nevertheless, de Soto does not allow unrestricted use of the permission when given, but only such as will be of benefit to the penitent.[39]

Navarrus remarks that the reasons for the contrary opinion are not of a nature to compel its ac-

[38] *Ibid.,* fol. 94 a: ". . . *Et quamvis privato homini non est facultas dispensandi in precepto superioris commissa: potest tamen in multis sc. de eo quod fuit materia precepti facere non materiam, ut dixi de iuramento de mutuo in depositо.*"

[39] *Comment. in Sent.,* IV, d. 18, qu. 4, art. 6: "*Discrimen est, quod illi dicunt necesse esse ut paenitens iterum extra confessionem narret peccatum ipsum, cuius revelandi facultatem vult facere sacerdoti. At haec est una ceremonia metaphysica nihil ad rem moralem pertinens; nam si licet paenitenti, qui solum homicidium confessus est, extra confessionem narrare iterum homicidium, dicendo, hoc poteris revelare, cur sine iterata narratione non liceat dicere: Revela illud, quod tibi confessus fui, cum idem utrumque significet.*" (Ed. Lovanii, 1573, 517 a).

ceptance.[40] This teaching was adopted by most theologians and canonists after the close of the 16th century, including Bartholomew Medina (1581),[41] Emmanuel Sa (1596),[42] Sayrus (1602),[43] Gabriel Vasquez (1604),[44] Henry Henriquez (1608),[45] Delrio (1608),[46] Sanchez (1610),[47] Jerome Onufrius (1611),[48] Estius (1613),[49] Suarez (1617),[50] Filliucci (1622),[51] Reginald (1623),[52] Laymann

[40] *In cap. "Sacerdos,"* n. 151 ff. (*Opp. Omn.,* I [Venetiis, 1601], 352 b); *ibid.,* n. 154: *"Haec tamen [sc. argumenta contraria] non videntur tanti aestimanda, ut in suam partem nos trahere debeant."* (*loc. cit.,* 352* a).

[41] *Instructio Confessariorum,* l. 2. (Ed. Colon., 1601, 425).

[42] *Aphorismi Confessariorum, s. verb. "Confessor,"* n. 29 (ed. Colon., 1612, 102).

[43] *Clavis Regia,* l. XI, c. 7, n. 32 (Monast. Westfal., 1626, 836).

[44] *Comment. in III Part. S. Thom.,* qu. 93, art. 4, dub. 5, n. 2 ff. (Antverp., 1616, IV, 337 ff.).

[45] *Summa Moralis,* l. VI, c. 23, n. 1 (Mogunt., 1613, 310).

[46] *Disquisitionum Magicarum,* l. VI, c. 1, sect. 2 (Mogunt., 1624, 913).

[47] *In Praecepta Decalogi,* l. VI, c. 18, n. 43 (Parmae, 1723, II, 219).

[48] *De Sacro Sigillo,* sect. 2, qu. 5 (Mediolani, 1611, 124).

[49] *Comment. in Sent.,* IV, d. 17, § 14 (Parisiis, 1662, IV 234).

[50] *De Sacram. Paenit.,* disp. 33, sect. 5, n. 6 (*Opp. Omn.,* XXII [1866], 700).

[51] *Compendium Quaestion. Moral.,* pars 1, tract. 7 (Lugd. 1626, 84).

[52] *Praxis Fori Paenitentialis,* l. III, c. 5, sect. prior, n. 56 (Lugd., 1616, 159 ff.).

(1625),[53] Bonacina (1631),[54] Castropalao (1631),[55] Sylvius (1649),[56] Barbosa (1649),[57] Diana (1651),[58] Cardinal de Lugo (1660),[59] Busembaum (1668),[60] Tamburini (1675),[61] Fagnani (1678),[62] Gobat (1679),[63] the Salmanticenses (1631 to 1712),[64] Alexander Natalis (1724),[65] Clericatus (1717),[66] Schmalzgrueber (1735),[67] Ferraris

[53] *Theol. Moral.,* l. V, tract. 6, c. 14, n. 14 (Bambergae, 1677, 411).

[54] *Opera Mor.,* disp. 5, qu. 6, sect. 5, punct. 4, n. 8 (Antverp., 1643, I, 150).

[55] *Summa Moral.,* pars IV, tract. 23, punct. 19, n. 9 (Lugd., 1669, IV, 168).

[56] *Comment. in III Part. S. Thom.,* Supplem., qu. 11, art. 4 (Antverp., 1714, IV, 533).

[57] *Collectanea,* l. V, tit. 38, n. 21 (Lugd., 1716, III, 287).

[58] *Resolutiones Morales,* tract. XI, resol. 10 (Antverp., 1640, V, 343 ff.).

[59] *De Sacram. Paenit.,* sect. 5, n. 133 ff. (*Opp. Omn.,* V [Paris, 1893], 397 ff.).

[60] *Medulla Theol. Moral.,* l. VI, tract. 4, c. 3, resol. (Romae, 1844, I, 578).

[61] *Methodus Exped. Confess.,* l. V, c. 77, n. 1 (Colon., 1657, 392).

[62] *Comment. in V L. Decretalium,* tit. 38, c. "Omnis," n. 32 (Venet., 1709, V, 302).

[63] *Alphabetum Confessariorum,* Casus, 22, n. 832 (*Opp. Mor.,* I, 1 [Monachii, 1683] 839).

[64] *De Sacram. Paenit.,* disp. 9, dub. 4, n. 58 (*Cursus Theol.,* tom. XX [Parisiis 1883], 350).

[65] *De Sacram. Paenit.,* c. 5, art. 10, regula 63 (*Theol. Dogm. et Moralis,* II [Parisiis, 1743] 225).

[66] Decisio 49, n. 12 (*Decisiones,* I [Aug. Vind., 1730] 209).

[67] *Ius Can.,* l. V, tit. 38, n. 62 (Neap., 1738, V, 336).

(1760),[68] Benedict XIV (1758),[69] Phillips (1872), [70] Walter (1879),[71] *Analecta Iuris Pont.* (1861),[72] Ballerini-Palmieri,[73] Sägmüller,[74] Noldin,[75] Lehmkuhl,[76] Pruner,[77] Koch.[78]

This view is confirmed upon the whole by the Code of Canon Law, with an important restriction, however, in can. 1757, § 3, n. 2, which says: "Priests are to be rejected as witnesses in whatever concerns knowledge gained through sacramental confession, even though the parties have given them permission to speak. This principle applies to anyone who, whether cleric or layman, has in any way acquired knowledge through sacramental confession; the testimony of such a one cannot be accepted even as presumptive evidence of the truth."

This canon admits of a possibility of liberat-

[68] *Bibliotheca, s. verb. "Sigill. Sacr. Conf.,"* n. 18 (VII [Romae, 1891], 197).

[69] *De Synodo,* l. VII, 11, 6 (*Opp. Omn.,* XI [Prati, 1843], 220).

[70] *Lehrbuch des Kirchenrechts,*[3] (1881), 565.

[71] *Lehrbuch des Kirchenrechts,*[14] (1871), 637.

[72] N. 107, 285 ff.

[73] *Opus Theol. Moral.,* V [3] (Romae, 1900), n. 642.

[74] *Lehrbuch des kath. Kirchenrechts,*[2] (Freiburg, 1909), 502.

[75] *Summa Theol. Moral.,* III,[8] (1909), n. 423.

[76] *Theol. Moral.,* II [11] (1910), n. 602.

[77] *Kath. Moraltheologie,* II [3] (1893), n. 1117.

[78] *Lehrbuch der Moraltheologie,*[2] (Freiburg, 1907), 205; Engl. ed. by A. Preuss, *A Handbook of Moral Theology,* Vol. II, pp. 173 sqq., St. Louis, 2nd ed., 1919.

ing a person from the obligation of the Seal, namely, by the penitent himself. On the other hand it is ordained that, despite the permission of the penitent, the confessor (priest) cannot testify in an ecclesiastical court in regard to knowledge obtained through sacramental confession, no matter whether or not it refers to what has been confessed. The canon, therefore, extends beyond the proper object of the sacramental Seal.[79] This ordinance is not new, because already in former times the confessor was declared incompetent as a witness in an ecclesiastical court in matters pertaining to sacramental confession, even if the penitent gave his consent.[80] However, not only the confessor, but anyone who in any way, either intentionally or by accident, indirectly or through others, has obtained knowledge of what has been confessed, may not testify in any ecclesiastical court as to this knowledge, and if any such statements have been made, they are worthless as evidence, and the judge is not permitted to use them for further investigation.[81] It is right that this sharp distinction should be made between the internal and external forum; for thereby the semblance

[79] J. Noval, *Commentarium Codicis Iuris Can.*, l. IV, pars I (Aug. Taurin., 1920), n. 468; E. Eichmann, *Das Prozessrecht des Cod. Iur. Can.* (Paderborn, 1921), 143.

[80] Cfr. Wernz, *Ius Decretal.*, V (1914), n. 611.

[81] Noval, *loc. cit.;* Leitner, *Handbuch d. Kirchenrechts,* IV (1921), 130.

of wrong and all danger of scandal is removed from the Sacrament of Penance.

However, can. 1757 does not apply to all the words and actions of the confessor in administering the Sacrament of Penance, but only in as far as from them may be inferred what has been confessed. Whenever this is not the case, the testimony of the penitent or other persons regarding matters transacted in the confessional should, as a rule, not be accepted; if, however, the confessor is guilty of a crime, either regarding faith or morals, this rule does not apply, otherwise punishment would be impossible.

For the rest, all authors are a unit in saying that the permission given by the penitent must be *absolutely voluntary,* and may be recalled at any moment; it must also be *explicit,* not merely tacit or much less presumptive; finally, the confessor should not easily ask for such a permission, and make use of it only for weighty reasons.[82]

§ 7. THE PENALTIES FOR VIOLATING THE SEAL

In the period before the IVth Lateran Council there were very few laws which prescribed punishments for violating the secrecy of the confessional.

[82] Cfr. Ballerini-Palmieri, *loc. cit.,* n. 644 ff.; Artnys-Damen, *Theol. Mor.,* II [10] (1920), n. 454.

The first we know of is contained in the 20th canon of the Second Synod of Dwin in Armenia (554), which reads: "The priest who reveals the confession of a penitent, shall be deposed with anathema." [1] At the close of the ninth century the *Paenitentiale Summorum Pontificum* ordains removal from office and banishment as penalty for priests who violate the sacramental Seal.[2] The same ordinance recurs in the collection of canons made by Anselm of Lucca [3] and that of Cardinal Gregory and in Gratian, *Cap. Sacerdos* (c. 2, D. vi, *de Paen.*). The Fourth Lateran Council threatened the violator of the sacramental Seal with removal from office and confinement in a monastery for life.[4] For reasons easily conjectured the Council commuted the older ordinance of the *Cap. Sacerdos* (*"perpetual peregrination"*) [5] into life-long confinement in a monastery. Whether the penalty of infamy continued in force is uncertain.

The Code of Canon Law has, in canon 2369,

[1] See *Supra*, p. 56.

[2] *Supra*, p. 87.

[3] *Supra*, p. 99.

[4] C. 12, X (V, 388: *". . . qui peccatum in paenitentiali iudicio sibi detectum praesumpserit revelare, non solum a sacerdotali officio deponendum decernimus, verum etiam ad agendam perpetuam paenitentiam in arctum monasterium detrudendum."*

[5] *"Deponatur et omnibus diebus vitae suae ignominiosus peregrinando pergat"* (*l. c.*).

two penal paragraphs, the first of which refers to the confessor, and the second to other persons subject to sacramental secrecy. Although other penalties have been substituted for the older ones, nevertheless the presuppositions for these penalties are stated in the same words in which the Fourth Lateran Council couched them. Therefore a close examination of the older penal paragraphs will contribute not a little towards understanding the discipline now in vogue.

In detail we note the following:

The penalties fixed by the Fourth Lateran Council for violating the Seal were *ferendae,* not *latae sententiae,*[6] as may be plainly seen from the words: "*. . . a sacerdotali officio deponendum* [*et*] *in arctum monasterium detrudendum.*"

This penalty applied only to the confessor; because it is of him alone that the *Cap. "Sacerdos"* (c. 2, D. VI, *de Paen.*) and *Cap. "Omnis"* (c. 12, X, V, 38) spoke. Many canonists[7] extended this penalty to every priest who heard confession, even if without authority; but this view was not certain.[8]

On the other hand all were agreed that all other persons connected with confession, such as the interpreter, adviser, etc., are not subject to the aforesaid

[6] Cfr. L. Ferraris, c. *verb. "Sigill. Sacram. Confessionis,"* n. 28; *Bibliotheca,* VII, (Romae, 1891), 199.

[7] Cfr. Hollweck, *Strafgesetze,* 332[2]; Schmalzgrueber, V, 38, n. 60.

[8] Cfr. Ferraris, *loc. cit.,* n. 29; Hinsochius, *Kirchenrecht,* IV, 133.

penalties, but must be punished specially by the ecclesiastical judge, according to the measure of their guilt.[9]

By removal from office was meant deposition, not degradation, although several synods[10] employ the term *"degradare."* If the culprit was a simple priest without a definite ecclesiastical office or benefice, he was barred from ever obtaining any such office or benefice and from ever again administering the Sacrament of Penance.

Regarding confinement in a monastery, Reiffenstuel[11] remarks that it is no longer imposed and that in lieu thereof imprisonment—according to Gobat also other penalties[12]—may be inflicted by the ecclesiastical judge. Since the right of the Church to inflict the penalty of imprisonment is no longer recognized by most countries, she could, in a case of violation of the Seal, do no more than relegate the

[9] Cfr. A. Reiffenstuel, *Ius Can.*, l. V, tit. 38, n. 5 (Antverp., 1743, V, 348); Schmalzgrueber, *Ius Can.*, l. V, tit. 38, n. 80 (Neapoli, 1738, V, 338); Ferraris, *loc. cit.*, n. 30 (VII, 199); Hollweck, *Strafgesetze*, 332.[2]

[10] Treves, 1227, *De Paenit.*, c. 4 (Mansi, XXIII, 29); Cologne, 1279, *de Paenit.*, c. 17 (Mansi, XXIV, 317); Lambeth, 1330, c. 3 (Mansi, XXV, 893). Cfr. Benedict XIV, *De Synodo Dioeces.*, l. IX, c. 6, n. 3; Hinschius, *Kirchenrecht*, IV, 133.

[11] *Ius Can.*, l. V, tit. 38, n. 4 (ed. Antverp., 1743, V, 384); Hollweck, *loc. cit.*, 333.[12]

[12] *Opera Moral.*, tract. 7, cas. 22, n. 844 ff. (Monachii, 1683, I, 841).

delinquent to some institution set aside for this purpose.[13]

In the case of regulars the penance, according to a decision of the *Congregatio Episcoporum et Regularium,* consisted in fasting three times a week on bread and water, to be taken kneeling on the floor. After the meal the culprit had to prostrate himself in the doorway and let the brethren step over him.[14]

The aforesaid ecclesiastical penalties could be imposed only when the aggravating circumstances mentioned in *Cap. "Omnis"* were present in a violation of the Seal. They are the following: the violation must (a) refer to a *sin* confessed by the penitent, no matter whether this sin be mortal or venial. It sufficed that the confessor, with reference to a definite penitent, either directly or indirectly, by word or sign, revealed grievous sins, even in a general way, or a venial sin specifically.[15] (b) The communication must be made to *other* persons, not to the penitent, because in the latter case there would be no *"revelare"* in the strict sense, which must always be taken when penalties are to be imposed.[16] (c) The viola-

[13] Cfr. Hollweck, *loc. cit.*

[14] *In Una Augustinianorum,* 5. Septemb., 1659; cfr. L. Ferraris, *s. verb. "Sigill. Conf.,"* n. 27 (VII, 199).

[15] Hollweck, *loc. cit.,* 332.[7]

[16] Reiffenstuel, *Ius Can.,* l. V, tit. 38, n. 8 (Antverp., 1743, V, 384); Ferraris, *loc. cit.,* n. 34 (VII, 199); Hollweck, *loc. cit.,* 333.[9]

tion of the Seal must be committed consciously, *with premeditation,* as may be plainly seen from the words: *"qui praesumpserit revelare."* Transgressions in which one or the other of the aforesaid conditions is wanting, are subject to other penalties, to be imposed at the discretion of the judge.[17]

Let us compare with this the penalties in the Code. In regard to the confessor we read in can. 2369, § 1: "A confessor who dares to break the seal of confession directly, is under excommunication reserved *modo specialissimo* to the Apostolic See; if he violates the seal of confession indirectly, he is liable to the penalties of can. 2368, § 1."

The Code draws a sharp distinction between *direct* and *indirect* violation, which is not stressed in the ordinances of the Lateran Council, although this distinction was always observed in practice.[18] There is a direct violation of the Seal whenever a matter of sacramental secrecy is made known to other persons in an unequivocal manner,[19] no matter whether this is done by words, signs, actions, or even omissions, from which others may by a train of reasoning infer the identity of the penitent and the matter confessed.[20] In both cases the violation is subject to

[17] Reiffenstuel, *loc. cit.,* n. 7; Hollweck, *loc. cit.,* 332.[3]

[18] Hollweck, *loc. cit.,* 332 ff.

[19] Cfr. Wernz, *Ius Decretal.,* VI, n. 463.

[20] Vermeersch-Creusen, *Epitome,* II, n. 167. It does not seem pertinent to distinguish between an indirect violation in the strict and in a wider sense, because the latter, (use of sacra-

canonical penalties only if those acts were performed with a *full knowledge* of their criminality and with *full freedom of the will* (*qui praesumpserit*), as had already been decided by the Lateran Council for direct violations. That intentional ignorance (*ignorantra affectata*) does not render one immune from penalty follows clearly from can. 2229, § 1; however, every other ignorance or interference with the free exercise of the will, hence also grave fear, be it absolute or relative, excuses from the penalty.[21] Moreover, in case of direct as well as indirect violation of the Seal, the communication must be made to a third person. For although the confessor is bound to secrecy also when speaking with the penitent outside of the confessional, there would be no *"prodere"* in the strict sense of the word, as the Lateran Council has been generally interpreted.[22]

mental knowledge *cum gravamine poenitentis*) does not enter into consideration here.

[21] Cfr. on this point A. Črnica, *De Metu Gravi ut Causa Eximente a Poenis Latae Sententiae* (*Ius Pontificium,* V [1925], 9 ff., as against Eichmann, *Strafrecht,* 70, and against Cappello, who in his *Ius Pontif.,* V, 129, opposes the view of Črnica and does not admit grave fear as a ground for exemption from this censure. The argument of Capello contradicts the clear wording of the Code, which is decisive. Cfr. also J. Sole, *De Delictis et Poenis* (Romae, 1920), 362; C. Marc, *Institutiones Morales,* I[17] (Lugduni, 1922), n. 1270; A. Blat, *Commentar. Textus Cod. Iur. Can.,* V (Romae, 1924), n. 211.

[22] Hollweck, *loc. cit.,* 332; Wernz, *Ius Decret.,* VI, n. 466;

The penalty for direct violation of the Seal of Confession consists in excommunication reserved in a special manner to the Apostolic See, and differs from that inflicted by the Lateran Council in that it takes effect at once, hence is *latae,* not *ferendae sententiae.*[23] By confessor is meant every priest who actually hears confessions, even without jurisdiction, but not other clerics or laymen who arrogate this office to themselves, not even when the penitent confesses to them in good faith.[24]

In case of indirect violation the confessor incurs only penalties *ferendae sententiae.* These penalties are to be imposed according to the gravity of the offence, similar to those imposed for the *crimen sol-*

F. Cappello, *De Censuris Tractatus Canonico-moralis*[2] (Aug. Taurin., 1925), n. 193.

[23] Cfr. B. Schwentner, *Die Excommunicatio Specialissimo Modo Reservata* (*Theol.-prakt. Quartalschr.,* LXXVIII [Linz, 1925], 284 f.); however, only he incurs this penalty who divulges the sins confessed, not he who reveals secondary matters connected with the sacramental Seal. C. Marc, *Instit. Morales,* II, n. 1313.

[24] Vermeersch, *Theol. Moralis,* III, p. 410; J. B. Ferreres, *Compendium Theol. Mor.,* II[10] (Barcinone, 1919), n. 1235; Cappello, *De Censuris,*[2] n. 189; Sole, *De Delictis et Poenis,* p. 361; differently Noldin, *De Censuris*[15] (Oeniponte, 1923), n. 56, who includes in the censure also those who are not priests, to whom a confession has been made in good faith, whilst Chas. Augustine, *A Commentary on the New Code of Canon Law,* VIII[2] (St. Louis, 1923) p. 442, is of the opinion that the censure is doubtful in case the priest is destitute of jurisdiction.

licitationis (can. 2368), hence suspension from saying Mass, from hearing confessions even for life, loss of all ecclesiastical benefices and honors, the active and passive right of voting, inability to hold these offices and rights, and, in particularly grave cases, formal degredation. These penalties for indirect violation of the sacramental Seal are apparently severer than the excommunication inflicted for direct violation, but we must remember that the ecclesiastical judge as a rule will not impose all of them, whilst excommunication, at least after the sentence has been pronounced, carries with it not only most of these penalties, but also others (can. 2259–67).

Whenever the Seal of Confession is violated audaciously (*temere*) by an interpreter or other persons, who according to can. 889, § 2, are bound to sacramental silence, they shall be punished according to the gravity of the offence, and may even be excommunicated (can. 2, 369, § 2). A wide margin is here given to the ecclesiastical judge. As in the case of the confessor the presupposition is that the violation was committed with full knowledge and free will. When excommunication is to be imposed, an admonition must precede it.[25]

The Code contains no special penalties for the misuse of sacramental knowledge, forbidden by can. 890, so long as no direct violation of the sacramental Seal is involved. The two offences, the viola-

[25] Blat, *Comment. Textus,* V, n. 211.

tion of the sacramental Seal and the abuse of sacramental knowledge, differ widely from each other, and in the same manner as we have treated them separately in our treatise, so also has the new Code clearly distinguished between both. Some authors have not adverted to this and defined the Seal of Confession in a manner which excluded every use of the knowledge obtained in confession *"cum gravamine poenitentis."* [26] Even since the publication of the new Code this difference has not been noted by all canonists.[27]

The standard rule regarding the abuse of sacramental knowledge is therefore the instruction issued by the Holy Office in 1915, according to which the bishops and religious superiors shall earnestly admonish transgressors, punish condignly *recidivi,* and report particularly grave cases without delay to the Holy See.

§ 8. COMPETENCE AND JUDICIAL PROCEDURE

Various procedures on the part of the civil courts caused canonists [1] to debate the question whether the offence of violating the Seal should be brought into

[26] Noldin, *Theol. Moral.,* III [11] (1914), n. 430; Wernz, *Ius Decret.,* VI, n. 463.

[27] D. Prümmer, *Manuale Theol. Moral.,* III [3] (Friburgi, 1923), n. 443 ff.

[1] Reiffenstuel, *loc. cit.,* n. 9, 10; Ferraris, *loc. cit.,* n. 35 (VII, 199).

the ecclesiastical or the civil court. It was decided in favor of the former, as it obviously should be from the nature of things.

Another, more likely question discussed by the canonists,[2] was whether the ordinary judge (the bishop) is competent in cases of violation of the Seal, or the Holy Office, as Canon Law provides in similar offences in the administration of the Sacrament of Penance.[3] Since no general decision exists with regard to the Seal, the ordinary is regarded as the competent judge, as long as there is question of a simple violation or an abuse of the knowledge obtained in confession. In case the transgressor also proposes and advocates false doctrines concerning the obligation and extent of the Seal, the matter must be submitted to the Holy Office.[4]

The canonists differed somewhat in the rules they laid down for the judicial procedure. The Jesuit G. Gobat (+1679) holds, and endeavors to prove in great detail, that the legality as well as the validity of the procedure depends on the express permission of the penitent whose confession is in question. He bases his opinion on the axiom that all knowledge obtained in sacramental confession is subject to the

[2] Schmalzgrueber, *Ius. Can.,* V, 38; n. 82 (Neapoli, 1738, V, 338); Ferraris, *loc. cit.,* n. 36 (VII, 199 ff.).

[3] Cfr. *Decretum S. Officii "In Generali,"* 1745 (*Bullar. Bened. XIV,* II [1746], appendix, XLVI).

[4] Ferraris, *loc. cit.;* Dolhagaray, *Confession* (*Dict. de Théol.,* III, 974).

Seal, as long as the penitent does not release it.[5] In opposition to Gobat such eminent canonists as Reiffenstuel,[6] Schmalzgrueber,[7] and Ferraris [8] do not consider such a permission necessary. Neither the wording of *Cap. "Omnis"* nor the purpose of the Seal, they say, requires such a permission. Ferraris rather upholds the contrary view, for since the Seal and the dignity of the Sacrament are to be protected, the faithful would be encourged to go to confession rather than deterred from it. Moreover, in some cases, *e. g.,* when the penitent is dead, such a permission is altogether impossible, and thus the offence would remain unatoned.[9]

As to the evidence, if the accused priest admits his guilt, it is to be considered fully proved and, unless there are extenuating circumstances, the decision must be for the penalty fixed by Canon Law.[10]

If the priest admits the offence of which he is accused, but claims to have obtained his knowledge by other means than through sacramental confession, he must prove his contention. If he does not succeed in

[5] *Opera Moralia,* tom. I, pars II, tract. 5, cap. 42, sect. 7 (Duaci, 1700, 516 ff.).

[6] *Ius. Can.,* l. V, tit. 38, n. 11 (Antverp., 1743, V, 383).

[7] *Ius. Can.,* l. V, tit. 38, n. 85 (Neapoli, 1738, V, 338).

[8] *Verb. "Sigill. Confession.,"* n. 37; *Biblioth.,* VII (Romae, 1891), 200.

[9] Ferraris, *loc. cit.;* Wernz, *loc. cit.,* n. 467.

[10] Reiffenstuel, *loc. cit.,* n. 12; Ferraris, *loc. cit.,* n. 38.

this, but cannot, on the other hand, be fully convicted, the judge must inflict an arbitrary penalty.[11]

If the priest claims to have acted with the permission of the penitent, he must prove this fact if the penitent appears as plaintiff against him. However, in the case of a priest who enjoys an irreproachable reputation, the judge may be satisfied with an affirmation under oath.[12] In regard to other persons the presumption is in favor of the confessor.[13]

The canonists remark that in a case of alleged violation of the Seal, *"testes singulares"* are admissible, on account of the peculiar nature of the offence and its serious consequences for Christian morality.[14]

[11] Reiffenstuel, *loc. cit.*, n. 13.

[12] Phillips, *Lehrbuch des Kirchenrechts* [3] (1881), 566.

[13] Reiffenstuel, *loc. cit.*, n. 15 (Antverp., 1743, V, 384).

[14] Reiffenstuel, *loc. cit.*, n. 18. Cases in which the Seal of Confession has been directly and deliberately violated are rare. Lenglet du Fresnoy in his treatise on the Seal of Confession (c. VI, pp. 92 ff.) enumerates seventeen cases in which a violation of the Seal is said to have occurred. However, of this number one-half may be cancelled, either because there was no violation of the Seal at all, or because it appears more than doubtful. Lenglet admits this himself in a brief criticism of the cases recorded by him. Nor does H. C. Lea fare better with the violations of the Seal of Confession which he has collected in his *History of Auricular Confession* (Philad., 1896, I, 451 ff.). He uncritically accepted as true whatsoever he found anywhere concerning the violation of the Seal. Thus, on p. 454, referring to the Jesuit Gobat (1679), he speaks of two cases of direct violation of the Seal and translates Gobat's phrase: *"duo praedicantes"* by "two Dominicans," though Gobat very plainly says that they were Protes-

tant preachers, not *"duo fratres praedicatores."* Cfr. Gobat, *Opp. Moral.*, I, 1, casus 22, n. 178–179 (Duaci, 1701, 597). Neither does Lea (p. 451) doubt in the least that the Dominican Bishop Berengarius of Geroña violated the Seal of Confession and James I of Aragon (1213–1276) ordered his tongue to be torn out on this account; yet Pope Innocent IV strenuously defended the bishop against this accusation. Cfr. *Bullar. Francise.*, ed. Sbaralea, I (Romae, 1759), 416 ff.—The charge against Pope Boniface VIII that he forced the Grand-Penitentiary Matthew of Aquasparta to reveal to him the confession of the bishop of Sevilla, is not supported by sufficient evidence. Cfr. H. Finke, *Aus den Tagen Bonifaz' VIII.* (Münster, 1902), 261. A violation of the Seal of Confession, said to have occurred in Florence about 1375 cfr. H. V. Sauerland in the *Pastor Bonus* (1894, p. 91 sq.) arouses very strong suspicion, despite the papal briefs, because in 1405 a man of the same name, from the same city, a member of the same religious order, and also a *Magister Theologiae* like the alleged violator of the Seal, was made a bishop and in 1408 a Cardinal by Pope Gregory XII. Other cases I will pass over, because a thorough examination would lead us too far, and they are of no importance for the history of the Seal of Confession.

Regarding the martyrs of the Seal of Confession cfr. Schuler, *Die Martyrer des Beichtsiegels,*[2] Würzburg, 1892; L. Wintera, in the *Aar* I (1910), 311–321; concerning St. John Nepomucene, cfr. Bihlmeyer in the *Kirchl. Handlexikon,* II, 129; J. Weiskopf in the *Theol.-prakt. Quartalschr.* (Linz, 1926), Vol. 79, pp. 72–85, 264–281, 481–495; *Fortnightly Review* (St. Louis, Mo., 1927), Vol. XXXIV, No. 13, p. 275.

Part III

THE SEAL OF CONFESSION IN CIVIL LAW

The principles of Canon Law concerning the Seal of Confession were sanctioned by the civil governments during the Middle Ages.[1] The Reformation caused very little change in this regard because Protestants insisted on the obligation of sacramental secrecy,[2] although they repudiated the sacramental

[1] This follows both from the universal binding force of Canon Law in the Middle Ages, as also from cases in which the violation of the Seal of Confession was severely punished by secular judges. Cfr. *Vita S. Thomae a Villanova,* c. 7 (Bolland., *Acta Sanctorum,* Sept. V, 894–896); Lenglet du Fresnoy, *Traité Historique et Dogmatique du Secret Inviolable de la Confession* (Lille, 1708), 102, 105, 108; Hinschius, *K.-R.,* IV, 133.

[2] In answer to the question, whether a confessor might testify in a civil court, Martin Luther said: "She [it was a case where a woman had killed a child] did not confess to me, but to the Lord Jesus Christ; since Christ keeps the secret, I also must keep it and unhesitatingly say: I did not hear it; Christ has heard it, so He may say it." (*Dr. M. Luthers Tischreden,* chap. 14, [ed. by Bindseil and Forstemann, Leipzig, 1845, II, 289]). Cfr. Benedict Carpzov, *Iurisprudentia Ecclesiastica,* l. III, definitio 25 (Lipsiae, 1649, 48 ff.). Wiclif, however, believed that the Seal of Confession is incompatible with the precept of fraternal correction; cfr. Thomas Waldensis, *Opp. Omn.,* II, c. 152 (Venetiis, 1571, f. 251) °.

character and the necessity of Confession.[3] This explains why the Prussian Common Law of 1794 ordained: "Whatever is confided to a minister of religion under the Seal of Confession or official secrecy must be kept secret under pain of removal from office." [4] A similar passage in another place reads: "Ministers of religion who divulge secrets confided to them under the seal of official secrecy, except in the cases mentioned in the code, shall be punished, according to circumstances, by an arbitrary fine, by suspension from office and benefices, or by removal from office." [5]

Even as late as 1851 the violation of the Seal of Confession was subject to punishment according to the Prussian Penal Code; [6] but according to the Im-

[3] Cfr. the *Augsburg Confession* of 1530, art. 11; Carpzov, *Iurisprudentia,* l. II, defin. 275, p. 415; Tilesius-Friedrich, *Disputatio Iuris Ecclesiastici de Sigillo Confessionis,* Regiomontani, 1707; *Deutsche Zeitschr. f. Kirchenrecht,* Friedberg and Sehling, III (1894), 140 ff.; M. Goldacker, *Das Beichtgeheimnis des Evangelischen Geistlichen,*[2] Leipsig, 1902; E. Fischer, *Zur Geschichte der Evangelischen Beichte,* I, II, Leipzig, 1902, 1903.

[4] II. Teil, 11. Tit., § 80.

[5] II. Teil, 20. Tit., § 500.

[6] § 155: "Medical persons and their assistants as well as all who without authority divulge secrets confided to them in their profession and business, shall be fined to an amount not exceeding 500 Talers." Cfr. Hinschius, *Kirchenrecht,* IV, 134; Leonhard, *Das Beichtgeheimnis,* in the *Zeitschr. für d. gesamte Strafrechtswissenschaft,* XXVI (Berlin, 1906), 419 ff.

perial Code of 1877 this was no longer the case.[7]

However, at present most European governments in their legislative enactments show more or less respect for the Seal of Confession. The points to be considered here are: the obligation of the confessor to testify in court, and the obligation of notifying the civil authorities in case of danger to the common weal.

§ 1. THE OBLIGATION OF THE CONFESSOR OF TESTIFYING IN COURT

As long as the minister of religion was exempt from giving testimony in the civil courts,[1] there was not much danger to be apprehended for the secrecy of confession. After the *privilegium fori* was no longer recognized in many States, the confessor would naturally come in conflict with his most sacred duty whenever the civil law compelled him to testify to the full extent of his knowledge. As a matter of fact, however, most of the enactments are very lenient in this respect and take into consideration the status of the confessor as a minister of religion.

[7] Cfr. F. Sauter, *Das Berufsgeheimnis und sein strafrechtlicher Schutz* (*Strafrechtl. Abhandlungen,* ed. by Lilienthal, Heft 123), Breslau, 1910, 54 ff.

[1] A compilation of the ecclesiastical laws referring to this matter has been made by Cherubim Mayer, *Trismegistus Iuris Pontificii,* l. II, append., tit. 3, *de clerico in ius vocando* (Augustae Vindel., 1742, I, 287 ff.); cfr. also Nikol. Knopp, *Der katholische Seelsorger als Zeuge vor Gericht,* Regensburg, 1849, p. 5, note.

The Prussian Civil Code (*Allgemeines Landrecht*) decreed: "A minister of religion shall not be compelled to give testimony in court regarding what has been confided to him [*i. e.,* under the Seal of Confession or official secrecy], except with the consent of the person who confided the matter to him." [2] Similar laws were in force in the other German States.[3] The civil code of the Empire put an end to the various enactments in the different States of the Confederation.

We are concerned here chiefly with § 383 of the civil code and § 52 of the criminal code. Both enactments have for their purpose the safeguarding of the Seal of Confession by exempting ministers of religion from giving testimony.[4] § 383 of the civil code exempts from the giving of testimony: "4. Ministers of religion in regard to what has been confided to them in their official capacity." A limitation is placed upon this statute in § 385, 2, at least accord-

[2] II. Teil, 77. Tit., § 81.

[3] Cfr. Richter-Dove-Kahl, *Lehrbuch des kath. und evang. Kirchenrechts* [8] (1886), 990 [10]; and the article *"Das Beichtgeheimnis vor Gericht von einem Juristen"* in the *Katholik,* III. Folge, XIII (1896), 485 f.

[4] Cfr. Mode, *"Beichtsiegel und Zeugnispflicht nach den Reichsprozessordnungen,"* in the *Archiv f. kath. Kirchenrecht,* LXXXII (1902), 486 ff.; also Leonhard, *"Das Beichtgeheimniss,"* in the *Zeitschr. f. ges. Str.-R.-Wissensch.,* XXVI (1906), 436 ff.; Hellmuth Boeckler, *Der rechtliche Begriff des Beichtgeheimnisses. Sein Verhältnis zur Zeugnispflicht und zu § 139 des Reichs-Strafgesetzbuches,* Dissertation, Greifswald, 1917.

ing to the wording, which reads: "The persons mentioned in § 383, no. 4 (5) shall not refuse to testify whenever they are released from the obligation of silence." When this paragraph was under discussion, the Catholic deputies pointed out that Catholic priests could not be released from the obligation of keeping the Seal of Confession even if the penitent gave his consent. The chairman of the legal commission, von Amsberg, declared that this release applied only when it is given according to the law governing the individual cases. Therefore prominent jurists [5] declare that a Catholic priest may in every case refuse to give testimony, because according to Canon Law there is for him no exemption from the Seal of Confession.

The German civil code contains two other noteworthy statutes. Whenever a minister of religion wishes to make use of the exemption from testimony, he is not obliged to appear in court according to § 386, but may announce his intention in writing to the clerk of the court, stating the reasons for his refusal and (when requested) vouch for their va-

[5] Hinschius, *Kirchenrecht,* IV, 134; Loth. Seuffert, *Kommentar zur C.-P.-O.,* § 385, note 6,[a] I [10] (München, 1907), 598; Rich. Schmidt, *Lehrbuch des deutschen Zivilprozesses* [2] (Leipzig, 1906), 505; cfr. *Katholik, loc. cit.,* 487.—Geigel, *"Zeugnisfreiheit des Seelsorgers,"* in the *Archiv f. k. K.-R.,* LXXV (1896), 344,[8] is of the opinion that a clergyman is punishable if he refuses to make use of the permission given by the penitent.

lidity.[6] This the clergyman may do by asserting upon his ministerial oath that he knows nothing about the matter outside of confession, or in his capacity of clergyman. If the minister of religion cannot plead his official oath, as will undoubtedly happen in most cases, the judge must be contented with a simple affirmation.[7]

If the clergyman does not make use of his right to refuse to testify, the judge, according to § 383, No. 3, may nevertheless not interrogate him concerning facts which he cannot testify to without violating the obligation of secrecy.

In the German penal code § 52 permits a refusal of testimony on the part of "1. Clergymen in regard to what has been confided to them in their official capacity." Since there are no limitations, the clergyman may certainly refuse to testify in criminal cases, even if the penitent permits him to speak.[8] The judge

[6] The judge, therefore, need not be satisfied with the mere claim of the clergyman that he obtained knowledge of the matter solely in his official capacity. He may also enquire into the facts of the case in as far as the confided secret will permit, and may ask that they be substantiated in the manner mentioned above. Cfr. Mode, *loc. cit.*, 490 ff. However, as a rule the judge is satisfied with the statement of the reasons for refusal. Cfr. *Katholik, loc. cit.*, 486; Geigel, *l. c.*, 341 [6]; Leonhard, *l. c.*, 434; Mode, *l. c.*, 497.

[7] Cfr. Seuffert, *Kommentar zur C.-P.-O.*, § 386; I,[10] p. 599 [1]; R. Schmidt, *Lehrb. d. deutsch. Zivilprozesses,*[2] 506; Mode, *l. c.*, 497.

[8] Cfr. Loewe-Hellweg, *Die Strafprozessordnung für das Deutsche Reich.*[12] (Berlin, 1907), 297 [8]. The penal code gives

may require an oath to verify the claims on which the clergyman bases his refusal. He need not, therefore, be satisfied with the clergyman's mere affirmation, as in civil cases.

Since the exemption of the clergy from giving testimony extends not solely to matter communicated to them in confession, but also to whatever has been confided to them in the exercise of their ministry,[9] it is superfluous, as far as Germany is concerned, to discuss the question whether a clergyman may declare under oath that he knows nothing, although he has knowledge of the matter through sacramental confession. Although according to Catholic teaching, such an oath made with a mental reservation would be permissible in as far as it is really necessary to safeguard the secrecy of confession,[10] nevertheless the clergyman would be liable, according to the

to the clergyman the right to refuse testimony only in case he was not released from silence. The question whether such a release would also apply to the Catholic clergy regarding the Seal of Confession, was left undecided by the commission which adopted the rule laid down by Canon Law in this case. Cfr. Leonhard, *l. c.*, 426, 4, and 428 [4].

[9] This liberal extension was evidently made with regard to those religious denominations which do not practice confession in the sense of the Catholic Church; however, even so, Catholics may benefit by it.

[10] A writer in the *Katholik* (1896, I, 506) and Mode (*Archiv*, LXXXIII, 50) are of the opinion that if the enactments of the German code are properly handled, such a case could not occur, and that the legal safeguards of the Seal of Confession are fully sufficient.

wording of the law, to be punished for perjury.[11]

Laws in favor of the Seal of Confession similar to those of Germany exist also in other countries. In *Austria* the criminal code of May 23, 1873, in § 51 forbade the cross-examination of a clergyman "in regard to what has been confided to him in sacramental confession or otherwise under the seal of official secrecy." [12]

In *Switzerland* article 86 of the penal code of June 28, 1889, enumerates, among others, as exempt from giving testimony: "3. Clergymen . . . concerning matters communicated to them in their official capacity and which they are bound to keep secret, unless they have been dispensed from this obligation by the persons concerned." [13]

The *Norwegian* penal code of July 1, 1887, ordains in § 178: "Clergymen of the Established Church and of other recognized religious denominations can be required to give testimony in regard to matters confided to them in their ministry solely in cases where manifestation is ordained by law. . . ." This ordinance does not apply whenever the person, who has a right that the matter be concealed, gives his consent, and when the testimony is necessary to

[11] According to § 154 of the penal code.

[12] Vering, *Lehrbuch d. kathol., orient. und protest. Kirchenrechts,*[3] (1893), 740. Even with the consent of the penitent the clergy may not be interrogated in court. Cfr. Jul. Glaser, *Handbuch des Strafprozesses,* I (Leipzig, 1883), 526.

[13] *Katholik,* 1896, I, 491.

prevent an innocent person from being condemned." According to § 179 the reasons for refusing testimony must be verified, at least by a statement under oath on the part of the witness, in case other evidence is wanting.[14]

Philip Anth. Merlin (+ 1838), a pronounced republican, is a good witness to the custom which obtained in *France* until far into the 19th century; he writes: "The secret of confession is inviolable," and further on: "Even if a confessor would violate the secrecy of confession of the accused at bar, the denouncement which he would make, would neither be admitted (in evidence) nor regarded as a presumption influencing the mind of the judges.[15] The French jurists interpret in this sense article 378 of the *Code Pénal:* If any physician, surgeon or other health officer, or any pharmacist, midwife or other person to whom secrets have been confided on account of their office or profession, reveal these secrets, except in cases where the law obliges them to do so, they shall be punished by imprisonment of not less than thirty days nor more than six months, and by a fine of not less than one hundred

[14] *Ibid.*, 491 f.

[15] *Répertoire Universel et Raisonné de Jurisprudence, s. verb. "Témoin judiciaire,"* XII [5] (Paris, 1827), 92: *"Le secret de la confession est inviolable,"* and: *"Quand même un confesseur violerait le secret de la confession d'un criminel, la dénonciation qu'il ferait, ne serait ni admise ni regardée comme une présomption capable de faire impression sur l'esprit des juges."*

francs nor more than five hundred francs." [16]

The *Belgian* penal code has incorporated in article 458 the ordinance of the French *Code Pénal.*[17] However, here as well as in France there is a disagreement as to whether only matter pertaining to sacramental confession comes under this law or, as in Germany, everything confided to the priest in his official capacity.[18]

Article 288 of the *Codice di Procedura Penale* in Italy is an almost verbal translation of the *Code Pénal.*[19]

In *England* the legislation regarding our question appears vague and undecided, rather unfavorable than favorable to the Seal of Confession.[20]

In *Scotland* the clergy are forbidden to make any statements regarding matters confided to them in virtue of their profession.[21]

The laws in the United States have a similar tenor.

[16] "*Les médecins, chirurgiens et autres officiers de santé, ainsi que les pharmaciens, les sagesfemmes et toutes autres personnes dépositaires, par état ou profession, des secrets qu'on leur confie, qui, hors le cas, où la loi les oblige à se porter dénonciateurs, auront révélé ces secrets, seront punis d'un emprisonnement d'un mois à six mois et d'une amende de cent francs à cinq cents francs.*" More on this subject in the *Katholik, l. c.*, 492 ff.; Glaser, *Handbuch,* I, 524 [17].

[17] Cfr. *Katholik, loc. cit.,* 502.

[18] Cfr. Geigel, in the *Archiv für kathol. Kirchenrecht,* LXXV (1896), 348 [14].

[19] *Katholik, loc. cit.,* 502.

[20] Cfr. Glaser, *loc. cit.,* I, 525 [17].

[21] *Ibid.*

In the State of New York the clergymen of all denominations are prohibited from revealing a confession made to them in their "professional character in the course of discipline enjoined by the rules or practice of such denomination." [22]

§ 2. THE DUTY OF NOTIFICATION IN CASES OF CRIME AGAINST THE PUBLIC WELFARE

Although the majority of legislatures show a marked deference to the clergy in regard to the obligation of giving testimony, nevertheless in regard to denouncing a crime they differ more or less from the Catholic point of view. In the greater part of Germany the legislation on this subject followed the Protestant doctrine [1] that it is permitted, nay a duty of the clergyman to inform the police of contemplated crimes. § 82 (II, 11) of the Prussian common law says: "Whenever it is necessary to reveal such a secret in order to avert a danger threatening the State, or to prevent a crime, or to forestall or remedy the effects of a crime already committed,

[22] *Ibid.*

[1] Cfr. H. Böhmer, *Ius Eccles. Protest.*, l. V, tit. 38, § 50; Gründler, in Weiss' *Archiv für Kirchenrechtswissenschaft*, IV (1833), 60 f.; Richter-Dove-Kahl, *Handbuch des Kirchenrechts* [8] (1886), 987 [17], 992 [15]; Leonhard in the *Zeitschrift für gesammte Strafrechtswissenschaft*, XXVI (1906), 411 ff.; E. Chr. Achelis, article *"Seelsorge"* in Hauck's *Realenzyklopädie*, XVIII (1906) 136 ff.

the clergyman must make a denunciation to the officials." § 139 of the imperial penal code ordains: "Whosoever receives credible knowledge of attempted high treason, treason against the country, counterfeiting, murder, robbery, kidnapping or any crime against the public welfare at a time when its prevention is still possible, and neglects promptly to inform the State officials or the person menaced by the crime, shall be punished by imprisonment whenever the crime or a criminal attempt has been committed." [2]

The majority of the commentators extend the obligation of denunciation also to the clergy, irrespective of the manner in which the knowledge was obtained.[3] The Imperial Supreme Court accepted this view in a decision of May 15, 1880, which does not exempt even the wife from the obligation of denouncing crime according to § 139 of the Criminal Code, although according to § 386 of the Civil Code she is exempt from testifying against her husband.[4]

The confessor will rarely be in the predicament of choosing between the Seal of Confession on the

[2] To this must be added also crimes committed with explosives according to § 13 of the law of June 9, 1884, and the betrayal of military secrets, § 9 of the law of July 3, 1893.

[3] Cfr. Hinschius, *Kirchenrecht,* IV, 134; *Katholik,* 1896, I, 496; Loewe-Hellweg, *Die Strafprozessordnung für das Deutsche Reich* [12] (1907), 297.[9]

[4] Decisions of the Reichsgericht in penal matters, II, 57 ff.

one hand and the civil law on the other,[5] and from what has been said it is clear which law he must follow. Even Hinschius[6] is of the opinion that in case of a violation of § 139 of the Penal Code by the confessor the judge would impose the minimum penalty, namely, imprisonment for one day.[7]

RECAPITULATION AND CONCLUSION

As the Sacrament of Confession, instituted by Christ, was subject to various changes in its external form, so in like manner the obligation of silence on the part of the confessor shows evident signs of development. As long as *public confession* and *public penance* were in vogue in the heroic early centuries, the concealment of confessed sins was given very little thought. It was only when zeal began to decline and secret confession became the custom, that the obligation of silence on the part of the confessor became a subject of importance. Thus Sozomen demands silence of the penitential priest; Basil prohibits—though only out of regard for the civil law —the indirect revelation of confession by imposing a public penance on women guilty of adultery; Leo

[5] However, the case is not impossible, as the *Katholik* (*loc. cit.*, 513) seems to assume.

[6] *Kirchenrecht,* IV, 135.

[7] Regarding the extent of penalties for not reporting military offences cfr. Leonhard in the *Zeitschrift für gesammte Strafrechtswissenschaft,* XXVI (1906), 410.

I lays down the principle that confessed sins must be kept secret in order that the faithful be not deterred from receiving the Sacrament of Penance.

The requirement of public penance for secret capital sins was not looked upon as a violation of the Seal. Only by degrees the principle of St. Augustine, "*Corripienda sunt secretius, quae peccantur secretius*" gained the upper hand in imposing a penance for secret sins. In the 7th century this principle was universally accepted and in the 8th and 9th centuries it was frequently inculcated by synods.

Although since the 7th century the secrecy of sacramental confession was thus protected in a general way against direct and indirect violation, nevertheless special cases arose which necessitated a more precise definition of the obligation of the Seal. The Council of Pavia (850) permitted confessors to ask advice in difficult cases, *provided the name of the penitent was not mentioned.* Equally positive was Hincmar of Reims in the stand he took in the matrimonial affair of Lothaire II (860) against the indirect violation of the Seal, which he perceived in the fact that undue pressure was brought to bear on Queen Thietberga to extort from her permission to make use of her confession. Somewhat later the Synod of Douci (874) in France enjoined upon confessors *not to reveal the sins confessed to them by any sign or hint.*

While a Capitulary of Charlemagne of 813 or-

ders an investigation of alleged violations of the Seal and thus presumes the illegality of such a deed, the *Poenitentiale Summorum Pontificum* towards the close of the 9th century imposes removal from office and life-long banishment. The same enactment recurs in the collection of canons made by Anselm of Lucca (1086), Cardinal Gregory (1120), and Gratian. Innocent III commuted banishment into life-long confinement in a monastery. The Fourth Council of the Lateran to a certain extent brought the external development of the Seal to a close by summarizing the ordinances of the various councils and at the same time passing a universal law which, together with the precept of annual confession, inculcates strict observance of the Seal.

Though theologians had discussed the basis of the Seal already before the Fourth Lateran Council, two special questions came to the fore since the 13th century. The first of these refers to the universal obligation of the Seal. Must the confessor, it was asked, observe inviolable silence even in a case where serious detriment results therefrom to himself, to the penitent, or to the common weal? Honorius III had decided that in such cases the ecclesiastical superiors could in no wise compel a revelation of knowledge acquired through confession. The theologians, however, found a difficulty in the question: How can the confessor reconcile the commandment of charity, which obliges him to shield his fellowmen against

harm, with the obligation of sacramental silence? Does a penitent who is not willing to prevent harm, nay, who is determined to inflict injury, deserve to be protected by the Seal? Some believed the difficulty could be solved by permitting the confessor, after he had taken due precaution against injury to the penitent, to communicate the matter to the ecclesiastical authorities or to other persons well disposed towards the penitent.

French writers went even farther. In case of conspiracies and machinations against the civil government they imposed upon the confessor the obligation to denounce the conspirators to the authorities, because the common weal is to be preferred to that of the individual penitent. This school was opposed by other theologians and canonists, who conceded to the confessor merely the right of giving a general warning, which could cause no harm to the penitent.

In this conflict of opinions the theologians of the 17th century gradually approached the kernel of the question at issue, namely, when is a confession *sacramental?* For it is only sacramental confession which has a claim to the protection of the Seal. Not the want of disposition or the refusal of absolution are the decisive factors, but the *intention of the penitent* to submit his self-accusation to the judicial power of the priest. Whenever this intention can be surmised from the circumstances attending a confession, the obligation of the Seal arises for the

priest; but when it is wanting, the priest may make use of the matter communicated, nay, in certain cases is bound to do so.

A second question has reference to the *use* that may be made of the *knowledge obtained through sacramental confession.* Until the 17th century most theologians held it to be lawful, nay, the duty of the confessor, to use his knowledge for the spitiual benefit of the penitent, even though it involved material harm. Richard of Middletown was the first to point out the precariousness of such a practice. He was joined by several other theologians in the 16th century, until the General of the Jesuits, Claudius Aquaviva, in 1590, strictly forbade the superiors of his Order to use the sacramental knowledge in governing their subjects. By a decree of Clement VIII (1593) this ordinance was extended to the superiors of all religious Orders. For other confessors the question remained open, although opinions against the lawfulness of the practice multiplied under the influence of the Jesuits. During the incumbency of Innocent XI the Holy Office (1682) decided that all confessors were strictly prohibited from using knowledge derived from sacramental confession to the detriment of the penitent or of the Sacrament of Penance. This decision was followed by various other decisions of the S. Congregation, dealing with casuistics rather than with principles. With a few unimportant alterations the Code of

Canon Law has re-enacted the ordinance of Clement VIII and Innocent XI and extended the decree of Leo XIII of 1899 to the whole Church.

Besides the questions mentioned, others of minor importance engaged the theologians and canonists after the Fourth Lateran Council. Whilst some more rigorous writers declared all persons who in any manner participated in the sacramental knowledge, even lay-confessors, to be bound by the Seal, others made a distinction according to the *kind* and *degree* of the obligation. The confessor, they said, is bound to sacramental silence *by virtue of his office* and *by divine law.* All other persons are subject to the Seal only in a wider sense, *i. e.,* their obligation of silence is based *chiefly on the natural law,* to which must be added a certain regard for the Sacrament. This distinction, which is not sufficiently noticed by many modern moralists, in our opinion furnishes the key to the correct view and seems to be in accord with the Code of Canon Law.

The legal basis of the Seal, according to the almost unanimous opinion of theologians and canonists, are the natural, the positive divine, and the Church law. The explanation of the first and third titles, offered little difficulty to the canonists. In regard to the second, they contented themselves with demonstrating the necessity of the Seal for the Sacrament of Penance. That this necessity was *not always present in the same degree,* is a point not suf-

ficiently heeded by many theologians; hence the difficulty of reconciling the divine law of the Seal with the ancient penitential discipline of the Church. The conditions of the primitive ages made possible a public penance and partly also a public confession of secret sins without any particular detriment to the penitent and the Sacrament, whereas in subsequent times an unconditional concealment of confessed sins became necessary. In this matter some theologians went so far as to deny the penitent's right of releasing the confessor from the obligation of silence. The rest deny this right to every other secular or ecclesiastical authority, but concede it to the penitent, which view is confirmed in the Code of Canon Law.

The canonical penalties for the violation of the Seal remained unchanged since the Fourth Lateran Council, except in this one point that relegation to an institution for guilty priests was substituted for life-long confinement in a monastery. The Code repealed the older penalties and substituted for them excommunication, *specialissimo modo* reserved to the Pope, for the direct violation of sacramental secrecy by the confessor; for indirect violation other grave penalties have been ordained in can. 2368. Other persons who violate the sacramental secrecy are to be punished according to the gravity of their offence (can. 2369).

The acknowledgment of Canon Law by the State in the Middle Ages had this effect, among others,

that the civil authorities acknowledged and protected the inviolability of the Seal of Confession. The Reformation and the French Revolution brought no radical change in this matter, and accordingly most modern legislatures accommodate themselves more or less perfectly to the strict obligation of silence on the part of the confessor.

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